

KAUA'I PLANNING COMMISSION
REGULAR MEETING
March 27, 2018

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Apisa at 9:24 a.m., at the Līhu'e Civic Center, Mo'ikeha Building, in meeting room 2A-2B. The following Commissioners were present:

Chair Donna Apisa
Ms. Kanoë Ahuna (*left at 1:25 p.m.*)
Mr. Roy Ho
Mr. Kimo Keawe
Mr. Sean Mahoney
Ms. Glenda Nogami Streufert

Absent and Excused:
Mr. Wade Lord

The following staff members were present: Planning Department – Director Michael Dahilig, Chance Bukoski, Jody Galinato, Ka'āina Hull, Nani Sadora, Leslie Takasaki; Office of the County Attorney – Deputy County Attorney Jodi Higuchi Sayegusa; Office of Boards and Commissions – Administrator Nicholas R. Courson, Commission Support Clerk Darcie Agaran

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Chair Apisa called the meeting to order at 9:24 a.m.

ROLL CALL

Planning Director Michael Dahilig: Commissioner Mahoney.

Mr. Mahoney: Here.

Mr. Dahilig: Commissioner Keawe.

Mr. Keawe: Here.

Mr. Dahilig: Commissioner Ahuna.

Ms. Ahuna: Here.

Mr. Dahilig: Commissioner Ho.

Mr. Ho: Here.

Mr. Dahilig: Vice Chair Streufert.

Ms. Nogami Streufert: Here.

Mr. Dahilig: Commissioner Lord. Chair Apisa.

Chair Apisa: Here.

Mr. Dahilig: Madame Chair, you have six members present this morning.

APPROVAL OF AGENDA

Mr. Dahilig: Next is the approval of the agenda. The Department would recommend moving Item K.1., the Subdivision Committee Report, to after Item G, and holding Item H, the Executive Session, during the lunch time period; that would be our recommendation, Madame Chair.

Chair Apisa: Do we have a motion to—

Ms. Nogami Streufert: I move to accept the agenda as amended.

Mr. Mahoney: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion passed 6:0.

Mr. Dahilig: Thank you, Madame Chair.

MINUTES of the meeting(s) of the Planning Commission

Regular Meeting of January 23, 2018

Regular Meeting of February 13, 2018

Mr. Dahilig: We are now on Item D. These are the minutes of the January 23rd and February 13th regular meetings of this Commission for your approval.

Chair Apisa: Do we have a motion to approve?

Mr. Mahoney: Chair, move to approve regular meeting minutes of January 23, 2018, and regular meeting minutes of February 13, 2018.

Mr. Keawe: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 6:0.

Mr. Dahilig: Thank you, Madame Chair.

RECEIPT OF ITEMS FOR THE RECORD

Mr. Dahilig: We are now on Item E, Receipt of Items for the Record. I have circulated supplements (for) Item No. F.2.b. This is the Class IV Zoning Permit for 2018-5. There is an attached copy of the Department of Water's correspondence for the proposed development. The Department recommends receiving this for the record.

Chair Apisa: Any opposed?

Mr. Mahoney: Move to receive the item for the record.

Ms. Ahuna: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 6:0.

Mr. Dahilig: Thank you, Madame Chair.

HEARINGS AND PUBLIC COMMENT

Continued Agency Hearing

Mr. Dahilig: We are now on Item F. This is the hearings and public comment period. Under Item F.1., Continued Agency Hearing, we have none for this morning.

New Agency Hearing

Special Management Area Use Permit SMA(U)-2018-6 for the construction of highway improvements at the Kapa'a Stream Bridge and Kūhiō Highway/Mailihuna Road intersection in Kapa'a, identified as Tax Map Keys: 4-6-014:024, 031, 033, 090, 092; 4-7-003:001, 002; 4-7-008:042, and affecting a total area of approx. 1.7 acres = *Federal Highway Administration/State of Hawai'i, Department of Transportation.*

Mr. Dahilig: Item F.2. This is New Agency Hearings. Agency hearing under F.2.a., Special Management Area Use Permit SMA(U)-2018-6 for the construction of highway improvements at the Kapa'a Stream Bridge and Kūhiō Highway/Mailihuna Road intersection in Kapa'a, identified as Tax Map Keys: 4-6-014 Parcels 024, 031, 033, 090, and 092, and TMK: 4-7-003 Parcels 001 and 002, and TMK: 4-7-008 Parcel 042, and affecting a total area of approximately 1.7 acres. The applicant is the Federal Highway Administration and the State of Hawai'i, Department of Transportation. There is a Director's Report pertaining to this matter, as well as the Supplemental No. 1 Director's Report.

Madame Chair, the Department would recommend opening the agency hearing at this time.

Chair Apisa: We will go ahead and open the agency hearing.

Mr. Dahilig: Madame Chair, we do have four individuals signed up to testify for this particular agency hearing on SMA(U)-2018-6. We have Annette Leftheriotis, followed by Martina Hildorfer, followed by Tommy Noyes. Annette.

Ms. Annette Leftheriotis: Good morning. Thank you. My name is Annette Leftheriotis and I work with Kong Radio Group. I am testifying today on behalf of myself and also my company of coworkers, which represents about 20 people. We are testifying in favor of Kaua'i Springs and Jim since—

Chair Apisa: This is not on Kaua'i Springs. It is a different subject right now.

Mr. Dahilig: This is on the roundabout at Mailihuna Road.

Ms. Leftheriotis: I'm sorry?

Mr. Dahilig: This is the roundabout at Mailihuna Road, Kapa'a.

Ms. Leftheriotis: I signed up, but that is not what I was here for, so—

Mr. Dahilig: Okay, so I will call you—

Ms. Leftheriotis: Okay, thank you.

Chair Apisa: We will call you later.

Mr. Dahilig: Martina?

Ms. Martina Hildorfer: Same with me.

Mr. Dahilig: Okay. Move you to the end, okay. Tommy Noyes. Madame Chair, just want to inform the Commission that we have also circulated written testimony that went to the Central Federal Lands, Highway Division pertaining to this matter.

Mr. Tommy Noyes: Good Morning, members of the Planning Commission. I am Tommy Noyes, the executive director of Kaua'i Path, a non-profit organization working for better walking and bicycling facilities throughout our communities. I have submitted supporting testimony to the Central Federal Lands, Highway Division in support of this roundabout installation. Reasons being that northbound traffic on Kūhiō Highway descends a slope approaching the project site and that leads to a long straightaway along the Keālia beach frontage. Those conditions lead to excessive vehicle speed and we know that speed kills in terms of roadway violence. So in an effort to make our roadway safer, efforts to install traffic calming (measures) will reduce traffic fatalities, and a roundabout is a perfect way to do that. It is going to stop...or it is going to cause motorists to travel at a more sensible speed because they know that roundabout is there. A traffic signal would not necessarily reduce traffic speeds. People

might speed up trying to get through a yellow light and potentially cause crashes. Further, due to the proceeding observation, left turns from Mailihuna Road are more complex than a standard intersection. I think one of the most important factors is this is an access and egress from Kapa'a High School, so you are going to have an unusually high number of young drivers there, less experienced, more impulsive, and with a higher statistical likelihood of having a crash. For all those reasons, a roundabout in that area makes very good sense; we support it. We feel it is the right direction, and thank you very much for the opportunity to provide testimony on those. I have submitted the letter that I sent in 2016 to Federal Highways, and you can see some of the additional points that I have made, but I want to keep it at three minutes this morning.

Chair Apisa: Thank you.

Mr. Noyes: Thank you.

Chair Apisa: Any questions? I have one question. I think there is a crosswalk there now, so obviously that would be relocated. Isn't there a crosswalk?

Mr. Noyes: No.

Chair Apisa: Oh, there's not?

Mr. Noyes: There is a crosswalk at the access to the road that goes up to Spalding Monument, but there is not a crosswalk at the site where the roundabout is...or the intersection improvements are proposed, and this would then provide much safer pedestrian crossings.

Chair Apisa: You are right; that is further south where the crosswalk is. No further questions? Thank you.

Mr. Noyes: Thank you.

Mr. Dahilig: Madame Chair, I do have Jim Satterfield.

Mr. Satterfield, are you on this item or are you on your item?

Okay. Felicia Cowden.

Mr. Robert Thomas: Oh, I'm sorry. We are here for Kaua'i Springs. I think we just signed up under the wrong item number. Sorry about that. (Inaudible)

Mr. Dahilig: Yes.

Ms. Felicia Cowden: Felicia Cowden from Kilauea. Tommy basically said my main concerns, like that left-hand turn heading north coming down Mailihuna Road is very difficult with a lot of teenaged drivers. I live on the north shore. I have a lot of teenaged friends. I would like to keep them safe. I think it is good. I like a roundabout. The one challenge that I am hoping to hear from...I actually wanted to hear about what the plan is for implementing it and how long that

would take because sometimes road improvements take an incredibly long amount of time. So if it took six months to put in a roundabout or something like that, there is no way to get around that roundabout, so we are already pretty choked in the morning heading south. I am just hoping that there is a good provision for quick implementation. Thank you.

Chair Apisa: Thank you.

Mr. Dahilig: Madame Chair, that's all I have signed up to testify on this particular agenda item. I would recommend making a final call for any further testifiers for this agency hearing, and if there is none, to close the agency hearing at this time.

Chair Apisa: Would anyone else like to testify on this matter? Hearing none. We will close the hearing.

Mr. Mahoney: Chair, move to close the agency hearing.

Ms. Nogami Streufert: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 6:0.

Mr. Dahilig: Thank you, Madame Chair.

Class IV Zoning Permit Z-IV-2018-5 and Use Permit U-2018-4 to construct a new covered play court on the Waimea Canyon Middle School campus in Waimea Town, situated approx. 1,200 ft. north of the Kaumuali'i Highway/Huakai Road intersection, further identified as Tax Map Key: 1-2-006:033 (portion), and containing a total area of 15.5 acres = State of Hawai'i, Department of Education. [Director's Report received by Commission Clerk 3/13/18.]

Mr. Dahilig: We are now on Item F.2.b. This is a new agency hearing for Class IV Zoning Permit Z-IV-2018-5 and Use Permit U-2018-4. This is to construct a new covered play court on the Waimea Canyon Middle School campus in Waimea Town, situated approximately 1,200 feet north of the Kaumuali'i Highway/Huakai Road intersection, further identified as Tax Map Key: 1-2-006 Parcel 033, a portion, and containing a total area of 15.5 acres. The applicant is the State of Hawai'i, Department of Education. Madame Chair, there is a Director's Report pertaining to this matter, and as for your information, given no meeting at the beginning of March, this Director's Report was received by the Commission Clerk by rule.

I do have four individuals that have signed up to testify, as well as for the Commissioners' information, we have circulated a March 25, 2018, cover letter, along with what it looks like to be a petition of a number of signatures that relates to concerns with this particular item. With that, Madame Chair, the Department would recommend opening the agency hearing at this time.

Chair Apisa: We will open the agency hearing.

Mr. Dahilig: Madame Chair, I do have Trisha Denny, followed by Councilman Arthur Brun, followed by Barry Hashimoto. Trisha Denny.

Ms. Trisha Denny: Hi. I think I am speaking, for me, as–

Chair Apisa: Could you state your name for the record?

Ms. Denny: Oh, sorry. I am Trisha Denny. I am a resident right behind the school. I am going to be 40 feet from this construction if I read the plan correctly. This is going to affect us, as well as all our neighbors. We are very concerned about this. I know a lot of my neighbors didn't even receive the letter, so a lot of people found out about this last week. It is a little rushed, and what we tried to do (was) to rally our neighborhood to get their feelings and their input.

I am not against them getting play court – hey, they need it – but not 40 feet from my house. There seems to be way better places for them to have it. It is on the opposite end of the school from their locker rooms, so they are going to go through the whole campus to get to this. There is ample space right next to the locker room and I don't see why that would be...we all think that would be a better place for it. The noise, the potential activity off hours is not something we want. I am speaking for myself and I know there are other people here that have the same sentiment as I do. Thank you.

Chair Apisa: Thank you. Any questions? No. Thank you. Oh, wait, one question.

Ms. Ahuna: Did the neighbors share their concern with the school at all? Is the school aware of it?

Ms. Denny: Like I said, a lot of us only found out about it and we just went walking around the neighborhood, so...I mean, I am not sure if anybody was able to contact the school. They were on Spring Break last week when a lot of us were kind of talking to each other. So as far as I know, I didn't, but like I said, they were out. We were trying to also kind of collaborate because we were trying to rush to do something.

Chair Apisa: Kimo.

Mr. Keawe: I have a question. You are not against the play court. Your concern is the location of the play court?

Ms. Denny: Yes.

Mr. Keawe: And your suggestion is to move it to the opposite side of the campus?

Ms. Denny: Further down. I don't know if you can see, but their locker rooms are down here from what I gather, and there is a big empty space right next to it; not on the other end by the other houses. We don't want to go, hey, let's go shove it by the other houses because there is an–

Mr. Keawe: That was my question.

Ms. Denny: No, not there. There is a place right by the locker rooms, which is really close to...I mean, to us, that all makes the most sense. We are not saying go shove it by the other neighbors; no.

Mr. Keawe: Any of you were concerned with any noise with the old playground equipment that was there?

Ms. Denny: Well, that's...one, it is a lot further away from our place; two, they don't do special events at that playground. I mean--

Mr. Keawe: Right.

Ms. Denny: And this thing...I mean, I assume it is going to be pretty big because it is a volleyball/basketball court. They are going to be high, blocking all of our wind, blocking all of our...I mean, you know?

Mr. Keawe: Again, to reiterate, you are not against the project, you are just against the location?

Ms. Denny: Yes.

Mr. Keawe: All right.

Ms. Denny: I mean, you know, we are anything for the school; we want stuff for kids.

Mr. Keawe: It is a great facility, yes.

Ms. Denny: Yes, but 40 feet from my property? I mean, that is going to be loud. There is no way that that is not going to be extremely--

Mr. Keawe: Some of the classrooms are within that 40-foot range along that wall, aren't they not?

Ms. Denny: They are, but you can hear once in a while if the teacher is really mad.

Mr. Keawe: Right.

Ms. Denny: You can hear her yelling, but, to me, a special event where you have hundreds of people in a contained area is way louder than a classroom.

Mr. Keawe: All right. So it is more a question of the type of activities that will be done in that particular facility?

Ms. Denny: Yes.

Mr. Keawe: And your concern is noise?

Ms. Denny: One of the main concerns is noise. I mean, there is also other people that hang out there (during) off hours during the day and night; unsolicited activity I should say. I know there are already some problems with it, but bringing something even closer to our neighborhood is not something we would want.

Mr. Keawe: All right, thank you.

Ms. Nogami Streufert: I am not sure...I can't see your map there, so I am looking at my map on Google Earth.

Ms. Denny: Yes.

Ms. Nogami Streufert: So you are thinking that it would be away from the housing area and to the makai side. Is that what you are looking at?

Ms. Denny: From what I am told, this is the locker rooms, and there is this big area.

Ms. Nogami Streufert: The locker rooms. So that is close to where the athletic field is?

Ms. Denny: Yes.

Ms. Nogami Streufert: Okay, got it. Thank you.

Mr. Dahilig: Just for the record, the testifier is pointing to the south-eastern portion of the campus.

Ms. Nogami Streufert: Right, close to the athletic field.

Chair Apisa: Any other questions? Thank you for testifying.

Ms. Denny: Thank you.

Mr. Dahilig: Councilman Arthur Brun, followed by Barry Hashimoto, followed by Maile Moriguchi.

Mr. Arthur Brun: Good morning, Commissioners. Arthur Brun, speaking as an individual resident. I live right across where this thing is going to be built, right across Barry Hashimoto. I guess the concern...I got a call two Fridays ago before I left for the mainland, so I couldn't do anything last week, and I never got any letter in the mail as did most of these residents that showed up today. There was no notification, no meeting with the community. I was under the impression they were going to cover the existing basketball court, not build a new one. When I was told about an existing covered court, we were going to put a cover over the basketball court that is there right now, not build a new one. So when I found out, I called and yes, sure enough, we are building a new one. The location is not a good location. Again, none of us are against

this court; by all means, we want this to be built. There are better places to build it. There is a section right next to the playground at Waimea Canyon right now that...there is an opening right there that this could be built right there. But it is too close to these houses; a lot of these people are retired, some of them have young babies. It is going to be a lot of noise that is going to be right there in the neighborhood. For us, we are not against the project at all. It is just the location of the project, and this was, apparently, never communicated. The residents that live right there that is going to be affected by this court was never told anything. I just got a notice that they sent a letter; I never received it. I never changed my box in 15 years, so I never received it. I don't know where it went, but it never got to my address. I knew nothing about it. I had people calling me, screaming what you doing? I am like hey, I have no clue what you are talking about, and then I had to do research to figure it out. Please, if we can extend this for two weeks, so the...I think the Department of Education and the school needs to reach out to these residents. I think if they reached out to these residents before putting this on this agenda or did a better job of reaching out, we wouldn't be at this point today because there are some of these people that have to take off from work to be here, and that is kind of uncool that that was done and there was no communication. So if we can have better communication with the community...because all of them that I talked to that's there don't want it where it is at; not one person said yes, that is a great idea. But, not one of them is against the project. Location is the key that it is a bad location where it is at. They all support it; everybody supports this. Just a better location; that is the key. Thank you.

Chair Apisa: Thank you. Any questions for Mr. Brun?

Mr. Dahilig: Barry Hashimoto, followed by Maile Moriguchi.

Mr. Barry Hashimoto: My name is Barry Hashimoto and I live right against the tile wall that...right below there is where this project is supposed to be done. The tile wall is about six feet, and whatever happens in the school, it comes right up and echoes right into our homes over there. I spend a lot of time in my garden and everything, and you can hear whatever is going on because of the echo. I can just imagine this project being where they want to put it. Like I said, I am happy that the people got the money for this project, I am all for it, but just the location. I am surprised that somebody had to...you know, lucky I live on Kaua'i and the west side where people talk and people say hey, you heard about what they are going to do behind your house? No, you know? So that was another problem, you know, like Arthur was saying, I had to go see him, too; you know about it? No, you know?

Anyway, I got some info about this, like the standards of this kind of projects. You are supposed to take into consideration the detrimental health, safety, peace, and everything before considering having this kind of projects done. I am nervous about talking, but I don't know if the rules have changed or anything, but shouldn't it be kind of blended in with the surroundings so that it doesn't create a problem? You know, noise or people coming around. Like Denny said, get one walkway from our neighborhood right to the school, right next to her, so when you get special events, are more people going to park by our houses because it is going to be closer to go there or what? Anyway, that is basically all I got to say. Thank you very much for your time.

Chair Apisa: Any questions? Thank you.

Mr. Hashimoto: Thank you.

Mr. Dahilig: Maile Moriguchi.

Ms. Maile Moriguchi: Hi. My name is Maile Moriguchi. I am a long time resident of the subdivision adjacent to Waimea Canyon Middle School. I also just found out about this project about the middle of last week. I have a child that attends Waimea Canyon Middle School. I also attended Waimea Canyon Middle School myself. I have no problem with the project itself, but the location is a big concern for us. Also a big concern is that we never really had any time to communicate with the DOE about the project; they never asked us for any input being that we are the community right there next to them. We would like to work together with them to see about a location that would work for everyone involved. No advanced notice was given to us, and as far as my understanding, it was 85 percent of the people within 300 feet/yards of the project, and I don't see that that was met based on us walking around and talking to our neighbors about what was going on. We wrote a letter and got some signatures of people who weren't able to attend today who are also opposed to the location of the project, but not the project itself. So we would like to be good neighbors and help them with making this project work for everyone.

Chair Apisa: Thank you. Any questions? All right, thank you.

Ms. Moriguchi: Thank you.

Mr. Dahilig: Madame Chair, that's all I have signed up to testify on this particular agenda item. I would recommend asking for any further testimony on this particular agency hearing, and then I would probably make a recommendation to keep the agency hearing open until we hit New Business given the nature of the testimony.

Chair Apisa: (Would) anyone else like to testify? Seeing none. A motion to keep the hearing open.

Mr. Mahoney: Chair, move to keep the hearing open.

Ms. Ahuna: Second.

Chair Apisa: Do we need a time?

Mr. Dahilig: That is fine.

Chair Apisa: Okay. A second?

Ms. Nogami Streufert: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion passed 6:0.

Mr. Dahilig: Thank you, Madame Chair.

Continued Public Hearing

Zoning Amendment ZA-2014-4, Amendments to Chapter 8 of the Kaua‘i County Code 1987, as amended, relating to the Agriculture Zoning District and the re-designation of agriculture uses that are generally permitted, permitted with a use permit, and/or prohibited in each respective zoning district = County of Kaua‘i. [Director’s Report received 3/25/14, hearing continued 3/25/14.]

Mr. Dahilig: We are now on Item F.3. This is the Continued Public Hearing. This is for Zoning Amendment ZA-2014-4, amendments to Chapter 8 of the Kaua‘i County Code 1987, as amended, relating to the Agriculture Zoning District and re-designation of agriculture uses that are generally permitted, permitted with a Use Permit, and/or prohibited in each respective zoning district. There is a Director’s Report that was received 3/25/2014 – that’s right, 2014 – hearing continued 3/25/2014, and there is a Supplemental No. 1 for this matter that has been circulated to the Commissioners.

The Department would recommend opening the Continued Public Hearing at this time.

Chair Apisa: We will go ahead and open the Continued Public Hearing.

Mr. Dahilig: Madame Chair, I do not have any individuals signed up to testify on this particular agenda item. The Department would recommend making a final call for any testimony, and closing the public hearing for this matter.

Chair Apisa: Any one here to testify? Seeing none. A motion to close the public hearing.

Mr. Keawe: Move to close the public hearing on this item.

Ms. Ahuna: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 6:0.

Mr. Dahilig: Thank you, Madame Chair.

New Public Hearing

Zoning Amendment ZA-2018-5: A bill (No. 2687) for an ordinance amending Chapter 8, Sections 8-2.1(a) and 8-4.2(a), and Chapter 10, Section 10-5A.7(a), Kaua‘i County Urban Design District. The proposal amends the Comprehensive Zoning Ordinance by introducing a new residential designation to reflect the increase in the Residential Zoning District to R-40 = Kaua‘i County Council.

Mr. Dahilig: We are now on Item F.4.a. This is Zoning Amendment ZA-2018-5, Bill No. 2687 for an ordinance amending Chapter 8, Sections 8-2.1(a) and 8-4.2(a), and Chapter 10, Section 10-5A.7(a), Kaua‘i County Urban Design District. The proposal amends the Comprehensive Zoning Ordinance by introducing a new residential designation to reflect the increase in the

Residential Zoning District to R-40. This is a bill that has come down from the Kaua'i County Council after first reading. There is a Director's Report pertaining to this matter.

The Department would recommend opening the New Public Hearing at this time.

Ms. Nogami Streufert left the meeting room at 9:40 a.m.

Chair Apisa: We will go ahead and open the public hearing on this matter.

Mr. Dahilig: Madame Chair, I do not have anybody signed up to testify on this particular public hearing. The Department would recommend making a final call for any final testimony, and then closing the public hearing afterward.

Chair Apisa: We have someone raising their hand; two people raising their hand. Felicia, go ahead and state your name for the record.

Ms. Cowden: Felicia Cowden for the record. I do not have a strong opinion at this point. R-40 is very significant, and I actually came today hoping to see a presentation on it to understand whether this is like a high-rise building or what it is. It seems like we definitely have a housing crisis, so I don't have a position of opposition, but I came to have a position of understanding. Is there going to be anything today that expresses what the R-40 is going to designate?

Mr. Dahilig: Yes, there will be.

Ms. Cowden: Okay, thank you.

Chair Apisa: Thank you. Anyone else? Okay, that's it. Any further persons wishing to testify? Hearing none.

Mr. Dahilig: Again, Madame Chair, given the nature of the testimony in the matter, the Department would recommend closing the public hearing on this matter.

Chair Apisa: Do I have a motion—

Mr. Mahoney: Chair, move to close the public hearing.

Mr. Keawe: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0 (Ms. Nogami Streufert is excused).

Mr. Dahilig: Thank you, Madame Chair.

Ms. Nogami Streufert returned to the meeting room at 9:51 a.m.

All remaining public testimony pursuant to HRS 92 (Sunshine Law)

Mr. Dahilig: We are now on Item F.5. This is the portion of the testimony relating to any remaining matters that are on the agenda that do not contain a public or agency hearing. I do have one individual signed up for Green Earth Matters, as well as four individuals signed up to testify on Kaua'i Springs. If we can invite Jan Kimura to testify on Item I.1. relating to General Business Z-IV-2017-12. Jan Kimura.

Mr. Jan Kimura: Good morning, Madame Chair and Commissioners. For the record, my name is Jan Kimura. It was just brought to light to me that there was a letter from the DOT back in May stating that they did a traffic study on the intersection where Green Earth Matters' facility is going to be, and they didn't see a problem with the traffic going there. Apparently, somebody dropped the ball. The letter states that Ray McCormick went out, did an inspection, and to his knowledge, there was no problem. But, with that being said, the facility has, from my knowledge of that, already taken care of all the rest of the conditions; the dust, they paved the road, they already did the Fire and Board of Health requests. It has been nine months since DOT put in any comments on this matter. With that being said, this shouldn't even (have) happened in the beginning because DOT already sent the letter back in May. And because of the request, I...you know, like other people like myself, you get something in front of you, you read it, you move it on; to you it is already done, right? And after the fact, they asked for it, and I think they forgot about it. So with that letter, you know, the reversal shouldn't be a problem; that is what we are here for, right?

Chair Apisa: Any questions?

Mr. Kimura: We good?

Mr. Keawe: Yes.

Mr. Kimura: All right, thanks.

Chair Apisa: We are good. Thank you.

Mr. Dahilig: This is on Item I.3. This is Contested Case Hearing No. 2015-20, Z-IV-2007-1 on Kaua'i Springs. I have Gary Neese.

Mr. Gary Neese: Good morning. My name is Gary Neese. I am testifying for Kaua'i Springs. I have been drinking the water for about 4 ½ years, and I have noticed over that time that it actually breaks down the kidney stones in my body. I think it is because of the perfect alkaline nature of the water, and I recommend it to everybody. That's about it.

Chair Apisa: That's it?

Mr. Neese: Yes.

Chair Apisa: Okay. Any questions? Okay, thank you.

Mr. Neese: Thank you.

Mr. Dahilig: Annette Leftheriotis.

Ms. Leftheriotis: Good morning. Thank you. This time I am back for the right item. My name is Annette Leftheriotis and I am testifying on behalf of Kaua'i Springs. I am testifying on behalf of myself and my colleagues at Kong Radio. Since the day that Jim walked through our door in 2002, he has been our advertiser, our friend, and our supplier of Kaua'i Springs water. You may have heard many times over the years Ron Wiley say, "It is the only water I drink." It is the only water we all drink. We would like to continue to be able to have the choice to drink that water. Thank you very much.

Chair Apisa: Any questions? Thank you.

Mr. Dahilig: Martina Hilldorfer.

Ms. Hilldorfer: Aloha. Good morning, Madame Chair. Thank you, Commissioners. Thank you. My name is Martina Hilldorfer. I represent myself, and as a board member of the American Culinary Federation, Kaua'i Chapter. Jim and Kaua'i Springs water has been a supporter of the American Culinary Federation, Kaua'i Chapter for many, many years. He donates water for our event you may know as the Annual ACF Breakfast. We feed over 2,000 people, and all the proceeds from this breakfast go towards supporting the culinary students at Kaua'i Community College. I have known Jim forever. I support him. I support Kaua'i Springs water. I am glad we have local water for local people. Thank you.

Chair Apisa: Thank you. Any questions? Thank you.

Mr. Dahilig: Jim Satterfield. I believe he is a party, so...

Mr. Thomas: I'm sorry, did you want to call that item? I think we mistakenly signed up for public testimony.

Mr. Dahilig: Yes, that is what you did.

Mr. Thomas: Jim is the applicant on that. Should we wait until the item is called? Okay, thank you.

Mr. Dahilig: Maka'ala Ka'aumoana.

Ms. Maka'ala Ka'aumoana: I would prefer to wait until the item is called later on in the agenda.

Mr. Dahilig: Okay. Madame Chair, that's all I have signed up to testify on any other agenda matter this morning. The Department would recommend making one final call for any 92 testimony for any other item.

Chair Apisa: Would anyone else like to testify? Go ahead.

Ms. Cowden: Felicia Cowden for the record. The Kaua'i Springs issue is kind of a very difficult one because it seems to be a piece of a much larger...it is an example of a much larger project of, like, who has to get an Environmental Protection Agency or an Environmental Impact Statement study. As far as the business goes, I think the business is a good business. I have gone and done a tour of their place, and when I see how much water drives away in a van every day, I think that is like a cul-de-sac or a household full of curly-haired people, you know, straightening it out in the morning. So I think their impact on the water is relatively minimal, and so I always have a lot of pain when I am looking at this issue because their issue is about something other than the water that they provide. When they get in trouble for providing water but we don't...I don't even want to name other businesses, but other value-added products that have water within them that are beverages, they don't come under the same requirement. I don't understand why the large landowners behind it aren't the ones who have to do all this jumping through hoops rather than this small end-user. I will admit that I don't totally understand this issue. I see where it is applicable to much, much bigger issues, and so these guys are being used as an example. I just feel a lot of pain that it is basically a good small business, but the issue that it represents is much larger. I know that there will be a heavier discussion on it, but I just want to point out that that middle position is that whoever is giving them the water is the one who should have to be doing all this compliance and not holding them accountable for it. We have other examples like with the 18-inch pipe where they are not being required to do it in the same way Kaua'i Springs is, so thank you.

Chair Apisa: Any questions? Thank you. Anyone else caring to testify on this? Seeing none.

CONSENT CALENDAR

Status Reports

Director's Report(s) for Project(s) Scheduled for Agency Hearing on 4/10/18.

Class IV Zoning Permit Z-IV-2018-6, Use Permit U-2018-5 and Special Permit SP-2018-3 to allow improvements to the Kīlauea Wells No. 1 and 2 facility that includes construction of a new generator shelter, and replacement of an existing pump and motor control center, on a parcel situated on the mauka side of Kūhiō Highway in Kīlauea, approx. 3,500 ft. southwest of the terminus of Kuawa Road, further identified as Tax Map Key: (4) 5-2-002:013, and containing a total area of 2.737 acres = *County of Kaua'i, Department of Water.*

Class IV Zoning Permit Z-IV-2018-7 and Use Permit U-2018-6 to allow construction of a new electrical substation on a parcel situated on the makai side of Kōloa Road in Lāwa'i, approx. 3,300 ft. southeast of the terminus of Aka Road, further identified as Tax Map Key: (4) 2-6-003:001, and affecting an area approx. 2.5 acres in size of a larger parcel = *Kaua'i Island Utility Cooperative (KIUC).*

Mr. Dahilig: I guess, Madame Chair, I recommend moving on to Item G. This is the Consent Calendar. This is Items G.1. and G.2. There are two applications for receipt of the report of the

Director, as well as set for agency hearing on April 10, 2018. This is in regards to Class IV Zoning Permit Z-IV-2018-6, Use Permit U-2018-5, and Special Permit SP-2018-3 for an application from the Kaua'i Department of Water, as well as Class IV Zoning Permit Z-IV-2018-7 and Use Permit U-2018-6 (for) an application from the Kaua'i Island Utility Cooperative.

These are for receipt of the record and set for that agency hearing on 4/10/18. If no commissioners wish to discuss the matters further, Madame Chair, we are on Committee Reports.

Chair Apisa: Anyone? Okay.

COMMITTEE REPORTS

Subdivision

Mr. Dahilig: Committee Reports. The Subdivision Committee Report.

Chair Apisa: We need a motion to approve the minutes from the Subdivision Committee meeting.

Deputy County Attorney Jodi Higuchi Sayegusa: I'm so sorry. Perhaps we could turn it to the Chair of the Subdivision Committee, just to get an update.

Chair Apisa: Yes, okay. Thank you. Jumped the gun a little bit there. Sorry. Sorry, Roy.

Mr. Ho: No problem. (At) this morning's meeting, we had a tentative subdivision map approval for Grove Farm, Jack Philips, and also CIRI Land Development Company.

Unidentified Speaker: Can't hear you.

Mr. Ho: Oh, I'm sorry. This morning's discussion – tentative subdivision map approval for Grove Farm, and final subdivision map approval for Jack Philips and CIRI Land Development; those were all approved. Subdivision extension requests – D.R. Horton, approved. Cameron Burgess – this is an extension to September 30th to complete his project. That is what we did this morning. Thank you.

Chair Apisa: Thank you for your report.

Mr. Keawe: Move to accept the Subdivision Report.

Mr. Mahoney: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 6:0.

Mr. Dahilig: Thank you, Madame Chair.

GENERAL BUSINESS MATTERS

Consideration and Review of Condition No. 20 for Class IV Zoning Permit Z-IV-2017-12, Use Permit U-2017-10 and Special Permit SP-2017-5, situated on Tax Map Key: (4) 4-9-009:012 (portion), Moloa'a Kaua'i = *Green Earth Matters Inc.*

Mr. Dahilig: We are now on Item I, Item 1, consideration and review of Condition No. 20 for Class IV Zoning Permit Z-IV-2017-12, Use Permit U-2017-10, and Special Permit SP-2017-5, situated on Tax Map Key: (4) 4-9-009 Parcel 012, in Moloa'a, Kaua'i. The applicant on this application was Green Earth Matters, Inc.

As you notice, Madame Chair, there is not, per se, a report for this matter; rather, some of the testimony did indicate there is an issue relating to Condition No. 20. Unfortunately, it is one of these situations where the language of the condition is a little too narrow for the Department to try to help resolve the matter given that the Department of Transportation has not yielded any response within the past nine months. We have tried to work it a number of angles, but this is kind of a last resort from a departmental standpoint where we need some clarity on how to proceed with enforcement of this particular condition. I will turn it over to Jody. She can give you some further background on this matter.

Ms. Jody Galinato: Good morning, Madame Chair and members of the Commission. Basically, like what Mike said, the applicant has had difficulty dealing with DOT. We did recommend a condition modification to read that the applicant may commence operations immediately subject to a one-year review, and applicant to submit status update on DOT to the Planning Department by March 27, 2019. I am here to answer any questions.

Chair Apisa: Go ahead.

Mr. Ho: Jody, what is the Planning Department asking now? Are we in a position to waive Condition No. 20? Or you want to enforce it?

Ms. Galinato: It is just that the wording is very vague, and one of the conditions of approval was that they get some kind of a recommendation from DOT. They have done everything else, but they have not been able to get anything written from DOT as of this date, so we were trying to give them some more time but allow them to start their business.

Ms. Ahuna: I have a question, Jody. Mr. Kimura shared that Ray McCormick actually had no additional requirements, or that was his comments. Can we just adopt that as the condition?

Ms. Galinato: You can.

Ms. Ahuna: May 10, 2017, Ray McCormick to Dahilig stated that there are no additional requirements, comments, nor objections to this facility, and that came from DOT, so I don't see why we can't just adopt that.

Mr. Dahilig: I think that is where the...we have a written record and then what we are hearing from DOT orally has been something that is a little more ambiguous in that, and so just to make sure that we are clean on what the Commission was intending by approving the permit last year, what was the intent behind Condition No. 20? Because the Commission's action was in June and the correspondence we got from McCormick was prior to June, and the language that came under Condition No. 20 – I will just read it for everybody's edification. If you would like to turn to it on the PDF, it is page 1312. But it says, “[p]rior to the operation commencing, the Applicant shall provide documentation to the Planning Department demonstrating that all the requirements of the State Department of Transportation have been met.” So that is the dilemma that the applicant has been kind of caught in a limbo with, is that they have tried to get that written confirmation from DOT reconfirming that May correspondence from Mr. McCormick; however, they have not been able to do that subsequent to the June meeting. We have a proposed condition that Jody did read out, but I think we ultimately need Commission authority to clarify what this condition means.

Ms. Ahuna: I mean, May to June is only a month, so I don't see that there is a...and they met everything else.

Ms. Nogami Streufert: I guess the question is, because the letter came before the stipulation, is that a problem?

Mr. Dahilig: Well, it is, and in effect–

Ms. Ahuna: If we were to agree, can we move on it? Or does it have to be...

Mr. Dahilig: Yes, it is purely within the Commission's discretion to fold it in at this point. I mean, I think from a departmental review standpoint, there has been quite a bit of due diligence and chatter that has gone on between the applicant and the Department of Transportation to try to meet whatever Condition No. 20 would entail. We believe in a situation where the applicant is not meeting the condition based off of them not being diligent; I will just put it that...without trying to be too critical of a sister agency here, I think we are at that junction where this is the linchpin for their operation.

Ms. Nogami Streufert: Could I ask a question? Since the letter from Mr. McCormick came in in May, but the stipulation was done in June, were there additional things that were intended in the June stipulation that were not addressed in the May letter?

Mr. Dahilig: As far as we understand, the difficulty with that particular intersection is, as the uses in Moloa'a have been intensifying, they were following a series of permits that required an upgrade of that intersection where the juice stand is presently. Those upgrades were slated for construction, but on September 11, 1992, something happened on the island, so that threw everything into whack. Since Hurricane Iniki, there has not really been an ability to proportionally give out the appropriate exaction to each of the individual landowners that are down there makai of the highway. This is just one additional applicant that is intensifying the use makai of the highway, but at the same time, should not necessarily be responsible for bearing the full cost of what the improvements for that particular intersection should be, so that is where

the dilemma with this particular application would be. In answering that question, Commissioner, that should there be a share for this? Probably. What should that be? We don't know because, ultimately, the highway is not within our jurisdiction. So in pursuit of trying to get that clarity, there has been a degree of non-responsiveness for about nine months. At this point, we are proposing something that still leaves the window open for them to work it out with DOT while, at the same time, being able to commence their operation now, or if the Commission feels like they have done enough, you know, let's close the door on it, that is within the Commission's prerogative as well.

Chair Apisa: Go ahead.

Mr. Ho: May we hear from the applicant?

Mr. Dahilig: He is here.

Chair Apisa: Sure.

Mr. Brandon Miranda: Good morning. Brandon Miranda, president of Green Earth Matters.

Chair Apisa: And?

Ms. Maile Bryan: Maile Bryan for the record.

Chair Apisa: Do you have a presentation or anything you would like to give us for a starter?

Mr. Miranda: Well, I guess what we were trying to go on is...I mean, the questioning of getting all that stuff in June was prior to us coming to the Commission was recommended and we had to have all these things lined up, and that is why we got that from McCormick to come to the Board as part of our application, so that is why it was a month prior. We went through our due diligence with every department before we could even come forth. Since then, we have listened to the community's concern – dust and everything. We have taken it upon ourselves to pave that whole road into our facility, as well as our facility, to keep dust and all of that managed because that was a concern from our neighbors – who is another green waste facility – as well as the fruit stand on the corner there or food spot there.

Chair Apisa: Any questions of the applicant?

Mr. Keawe: I have a question, maybe for Jodi. Jodi, because of the timing and how this happened, there is a special wording that we need to address Item 20 because one came before the other? I mean, the whole issue now is regarding that Condition No. 20. How do we move forward? I mean, it sounds like he has done everything he could do to get it done, and he got stuck in the bureaucratic red tape–

Chair Apisa: He got stuck in traffic.

Mr. Keawe: Yes, big time. So, you know, you hate to penalize someone for government inefficiency – bottom line – and that happens over and over and over again. So how do we extricate him, make him whole, and move forward?

Ms. Higuchi Sayegusa: I think it is sort of the comfort level of the Commission. The condition seems to be imposed just so that there are basic infrastructure amenities there in order to handle any impacts and also allow the operation to exist and operate functionally. It was meant to kind of coordinate with DOT, which has that...it is their highway and to kind of weigh in on what would be that requirement. I think it is up to you folks on how you want to still accommodate any potential effects that may come up, but at the same time, they have done an extensive amount to try to clear that out as much as they can.

Mr. Miranda: Can I add one more thing?

Chair Apisa: Sure.

Mr. Miranda: Also, too, what we are doing is exactly the same thing as our neighbor. So no matter where the traffic goes, it would have to go into that road, so I don't believe we are bringing any more traffic to our facility because it is already going there. That was kind of my thing, you know, it is not something totally different bringing new traffic in; it is the same traffic going there. It would just basically...a competition or whatever; they are going to another site, but the exact same road, same highway. The detour is on private property and not on any County or State highways.

Ms. Bryan: May I add? With regards to the date of Ray McCormick's getting back to with regards that he had no comment, that was all part...on April 7th, per the Planning Department, they sent out the request to various departments to give their comment to be compiled into the Director's Report, so that was why we had various people respond. So that was already originally in the Director's Report, which he had approved it and didn't have any comment for it. The reasoning behind it becoming a Condition No. 20, I am not clear, but we have done everything with due diligence to comply with all of the departments. We have finally gotten our clearance with the Department of Health, which was also a long process, and being that we had already received basically no impact or no comment from the Department of Transportation and still attempted to try to resolve and get additional information from them to clarify Condition No. 20, I believe that it has definitely been a disservice to us to begin our operation.

Ms. Nogami Streufert: Jody...can I ask a question of Jody?

Ms. Galinato: Yes.

Ms. Nogami Streufert: What is your recommendation at this point?

Ms. Galinato: It would be up to the Commission. You can either delete Condition No. 20 or we could amend it to read, "[t]he Applicant may commence operations immediately, subject to a one-year review. Applicant to submit status update on DOT to Planning Department by March 27, 2019."

Ms. Nogami Streufert: 2019?

Ms. Galinato: Yes, one year.

Ms. Nogami Streufert: Okay.

Mr. Ho: And if it is not resolved after one year, what would happen to the permit?

Ms. Galinato: It would be back here again.

Ms. Nogami Streufert: It would be reviewed. But, Mike, you were saying something earlier that part of the reason for trying to leave this open might be because of improvements that might be needed that they may be responsible for. Is that...

Mr. Dahilig: Well, yes, and again, this goes back 25 years where that intersection is actually not operating at the service level it needs to operate just because of the amount of traffic coming in and out of Moloa'a, as well as the commercial activity that is there on the corner. But because there are so many users of that particular intersection, it is hard to proportion exactly what is an applicant's fair share in that – I don't want to call it a subdivision because it is not quite a subdivision, and that is a whole other story – but in that area. What is a complication for DOT is that they are looking at this from an opportunity cost standpoint – at least when I talked to Larry Dill over the phone – but the methodology behind having to come up with something that they can then say okay, this is what your fair share is, I don't think that they have been able to resolve that. So in the meantime, this is still sitting here. Again, I don't have anything in writing from them that specifically states what they would be responsible for, but that point of engagement over the past nine months hasn't even reached the level of negotiation yet, and in the meantime, they are waiting to open their business.

Ms. Nogami Streufert: If one were to amend this to allow the operation to commence and then to give them a year or 18 months, say, to ensure that the Department of Transportation has enough time to at least relook the issue and then determine, is that something that can...I mean, that, I think, is your amendment.

Ms. Galinato: That would be okay.

Ms. Ahuna: Yes, but, to me, it doesn't seem like it should be just on this applicant for all of that. I mean, it is really DOT's responsibility, not this applicant. There are other green waste...I mean, then we are holding them accountable for DOT's kuleana, so to speak.

Mr. Dahilig: And I think that's–

Ms. Ahuna: Does that make sense?

Mr. Dahilig: Yes, and I think that's–

Ms. Ahuna: From what I hear from what you are saying.

Mr. Dahilig: Whatever their pro rata share is going to be is not going to be the linchpin that actually makes the improvements go in. I mean, given the amount of users that are there plus previous permittees that have not anteed up and done what they are supposed to do, having one applicant pay or not pay is not going to necessarily be the particular linchpin for that construction to happen. It really is going to come as a consequence of DOT wanting to assert its enforcement authority over all the users in that area to get what they need to aggregate and actually make a significant amount of either capital or sweat equity that would create a situation where they could move forward with construction; because I am not even sure if they have a design for the thing at this point; that's the difficulties. From a periodic standpoint, even if we were to hold them open for a year or two years, I mean, the reality is I am not really clear what would come out of DOT, and I think that is why it is more a status that we are asking for as part of the suggested condition that in one year, it is a status that comes back to the Commission. Or, in the alternative, you can also direct the status to the Department alone and then the Department can make a determination to bring it back up to the Commission.

Mr. Keawe: My concern is, you know, what do we need to do to get this guy open? I mean, he has been waiting there and doing what he thinks he should be doing, and we are concerned with future potential stuff. So if we make the decision to allow him to go ahead and operate, subject to DOT in the future--

Ms. Ahuna: The Department's status. Can we do that?

Mr. Dahilig: I guess if...maybe I can throw this suggested condition out to the applicant. Would you be okay with being allowed to operate immediately with the understanding that you could be asked to provide a proportionate share of any improvements at that intersection in the future?

Mr. Miranda: We, just like I said...I mean, I wasn't obligated to pay for the road into, but there were complaints about dust and mud; I paved the whole road. I am a small company. It was a lot for me to take on; I mean, I can't take on a whole highway. We are just trying to get our foot in the door. There is a lot of green waste I have to collect to pay for a highway; I already got to pay for the road to accompany my neighbor's complaints. I don't want to have to come back in a year and hope that we can operate again because somebody else is making complaints. I mean, this whole thing started because of a complaint; it was a nonsense complaint, but it was a competition. I understand that and it is what it is, but I don't want to have to go through this again and then be in limbo in one year, if possible. But we are willing to pay our share if it comes about that something...I mean, if we are making money from something and causing more traffic or any to that matter, I am not against...I mean, it is evident that we already put out money for keeping our community happy with the dust and mud. I wouldn't back down of my fair share.

Mr. Ho: The Department doesn't even have a plan to do anything in that area, so...I mean, that's in the future. If you hold them hostage year to year on a status report, that is not fair. I mean, you have got to give him a break. You know, five years from now, if they go ahead and do it, I am sure they are going to try to prorate their shares of collection amongst all the people that are there. We shouldn't have him come back year after year to appeal to us that he is doing his job, he is just waiting for the No. 20.

Mr. Keawe: Right. So, Jodi, the options are...can we delete Item No. 20 in its entirety?

Ms. Higuchi Sayegusa: Yes. I mean, that is an option for you to delete it, amend it as suggested, or tweak it even further, like how the Planning Director suggested, which is to sort of allow him to operate, and if any impacts come up and become apparent, then they may have to contribute at that time.

Mr. Keawe: He has already indicated he is willing to do that.

Ms. Higuchi Sayegusa: Right.

Mr. Keawe: I think the concern is how do we get him, legally, to operate so that we don't have any repercussions later? If we delete Condition No. 20 and in the future DOT comes back and says oh, by the way, he needs to do something, is there any repercussions for us because we deleted that condition altogether?

Ms. Higuchi Sayegusa: That's true, I mean, if it is totally omitted, it wouldn't be a condition—

Mr. Keawe: Right.

Ms. Higuchi Sayegusa: —that would hinge...it wouldn't be a mechanism tied to their entitlement to engage in the use that they are applying for.

Mr. Keawe: Right. He still can go ahead and...go ahead, Glenda.

Ms. Nogami Streufert: In either case, whether they...I think the sense here is that we want them to commence; it doesn't matter. So the only question is whether we are asking for a status update in a year or whether we are just eliminating it. But I think commencing doesn't really...it is not an issue here. So the question is what are the implications if we just delete it – legal implications – versus what are the implications of having them come back in a year or two years? I am perfectly willing to expand this more than a year.

Mr. Keawe: Yes.

Ms. Higuchi Sayegusa: Again, leaving some sort of mechanism to leave open this permit should there be any impacts that become apparent in the future...I mean, making it an explicit condition will be very clear. There are usually those catch-all conditions that require compliance with all laws.

Mr. Dahilig: Yes, there is a catch-all condition – Condition No. 10 – that if...and because of the way the permit was issued, there was a bit of a numbering issue; it goes from 10 to 15. There are no Conditions 11 through 14. But Condition No. 10 is the catch-all condition that if Department of Transportation does notice an impact and once they ask the Planning Commission to have the applicant come in and do their fair share, then I think that is a coverage.

Mr. Keawe: That pretty much answers that; we can eliminate it and Condition No. 10 is a catch-all.

Ms. Higuchi Sayegusa: Sure. I mean, the yearly update – that is something explicit as well that could be a good mechanism to check in and check to see if there are any impacts that the public notes, so the options are all there for you to consider.

Mr. Ho: That status update has no implication about his permit status?

Ms. Higuchi Sayegusa: It is an update, and if there are any amendments at that time, then you can consider it then. But otherwise, the entitlement to engage in the use would run with the land.

Mr. Keawe: So in answer to Commissioner Ho's question, as long as he is abiding by all the other conditions, there should be no impact on him, or...

Ms. Nogami Streufert: I think that some part of–

Mr. Keawe: I think...you know, he has already said he doesn't want to come back in a year and go, okay, we found something else.

Ms. Nogami Streufert: But a status report is required every year anyway. Is that correct?

Ms. Galinato: No. The status was only on this particular communication with DOT; that was all.

Ms. Ahuna: Jodi, can we make a motion to delete/remove that (Condition No.) 20 and do a catch-all and that's it?

Ms. Higuchi Sayegusa: The catch-all is already embedded as Condition No. 10 or 15. You folks just have to decide what you want to do with Condition No. 20; revise it to allow for an update – it doesn't have to be a year, it could be longer than that even – or if you want to just tweak that condition a little bit more, or delete it completely.

Chair Apisa: Are you ready to make a motion?

Ms. Ahuna: Yes. I would like to make a motion to remove it completely and to just go with the catch-all.

Mr. Ho: Second.

Chair Apisa: Okay, we have a motion on the floor. Any further discussion on it? All in favor? (Unanimous voice vote)

Ms. Higuchi Sayegusa: I'm sorry, did we have a second?

Chair Apisa: Yes.

Ms. Higuchi Sayegusa: Okay, I'm sorry.

Chair Apisa: Do we need a roll call?

Mr. Keawe: Do a roll call.

Chair Apisa: Let's do a roll call.

Mr. Dahilig: Madame Chair, the motion on the floor is pertaining to Item I.1., consideration and review of Condition No. 20 for Class IV Zoning Permit Z-IV-2017-12, Use Permit U-2017-10, and Special Permit SP-2017-5 to eliminate Condition No. 20 with the understanding that there is a Condition No. 10 as a catch-all. An "aye" vote is to eliminate the condition.

Commissioner Mahoney.

Mr. Mahoney: Aye.

Mr. Dahilig: Commissioner Keawe.

Mr. Keawe: Aye.

Mr. Dahilig: Commissioner Ahuna.

Ms. Ahuna: Aye.

Mr. Dahilig: Commissioner Ho.

Mr. Ho: Aye.

Mr. Dahilig: Vice Chair Streufert.

Ms. Nogami Streufert: Aye.

Mr. Dahilig: Chair Apisa.

Chair Apisa: Aye.

Mr. Dahilig: 6:0, Madame Chair.

Chair Apisa: Motion has passed 6:0.

Mr. Miranda: Thank you.

Mr. Dahilig: Thank you, Madame Chair. We are coming up to about an hour of run time. We could probably either take a break or go into the Stephen Hunt matter.

Chair Apisa: We will take a short break; 10-minute break.

The Commission recessed this portion of the meeting at 10:29 a.m.

The Commission reconvened this portion of the meeting at 10:44 a.m.

Chair Apisa: Call the meeting back to order after the recess.

Director's Report for a Petition to Revoke, Amend, or Modify Special Permit SP-2012-3 for a non-conforming transient accommodation use on State Land Use Districted "Agricultural" land, by applicant Vard Stephen Hunt, and to set a date for an Order to Show Cause, at TMK 510050280001, 4613 E Waiakalua Street, East Waiakalua, Kīlauea, Kaua'i. [Director's Report received 1/9/18, deferred 1/9/18 for hearing set for 3/27/18.]

Mr. Dahilig: Thank you, Madame Chair. We are now on Item I.2. This is the Director's Report for a petition to revoke, modify, or amend Special Permit SP-2012-3 for a non-conforming transient accommodation use on State land districted "Agricultural" land by applicant Vard Stephen Hunt, and to set a date for an Order to Show Cause, at TMK 510050280001, 4613 East Waiakalua Street in East Waiakalua of Kīlauea.

There is a stipulated Decision and Order pertaining to this matter that has been circulated to the Commissioners where our Enforcement Division has settled with Mr. Hunt on a fine and a cease and desist, and we are asking for the Commission's consent to issue the order. We believe that the fine, as settled, is appropriate given the offense, and that they are willing to pay it immediately. Mr. Chun is here on behalf of Mr. Hunt to answer any questions as well.

Chair Apisa: Mr. Chun, would you like to come forth and give us a statement?

Mr. Jonathan Chun: Good morning. Jonathan Chun on behalf of Mr. Hunt. Yes, we agree with what the Director said. Mr. Hunt and I met with the Planning Department about a couple weeks ago. We had an honest face-to-face discussion, as I represented to the Commission that we were going to be doing when Mr. Hunt came back from his trip. We were able to work out all the details of what was expected of Mr. Hunt. Mr. Hunt knows what is expected of him. I would just have to say that he was given some wrong advice by some other people, and he knows it now, so we just want to correct everything. We have done everything that was requested of us by the Planning Department. The website has been taken down; you can no longer find it at VRBO. All reservations, if any, that were done on VRBO are no longer there; that has been taken down. The new website that was created by the owner of Unit 2 – that was taken down and no longer in place, and he is willing to pay a fine as suggested by the Department in recognition of the fact that next time he will get better advice. If the Commission has any questions, I am happy to answer them.

Mr. Keawe: Mr. Chun, no issue with any of the stipulations in the order?

Mr. Chun: No. We worked that out. All the representations and the statements in there are totally agreed to by Mr. Hunt.

Mr. Keawe: Okay.

Chair Apisa: Any other questions?

Ms. Nogami Streufert: At this point, from now, (inaudible) Unit 2 will not be for transient accommodations?

Mr. Chun: No. Yes, for Unit 2, or any other unit, will not ever be used for transient vacation accommodations.

Ms. Nogami Streufert: Unit 1 wasn't (inaudible).

Mr. Chun: It was Unit 1 that was authorized. Unit 2— but there is also Unit 3, but Unit 3 was not involved. I didn't want to make an (inaudible), but he now understands the limits of the NCUC that he does have now.

Mr. Keawe: Just for the record, the fine is \$10,000 and the Planning Director will process his 2017 renewal application for TVNC #4302 as part of the settlement.

Mr. Chun: Correct.

Mr. Keawe: Okay.

Mr. Chun: I think as part of that, also, as part of the regular part of the renewal, they are going to be doing an inspection just to confirm everything is happening.

Mr. Keawe: Right.

Chair Apisa: Okay. Do we have...?

Mr. Mahoney: Is a motion in order to accept the stipulated Decision and Order?

Chair Apisa: Yes.

Mr. Mahoney: I move to accept the stipulated Decision and Order pertaining to this matter.

Ms. Nogami Streufert: I second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Unanimous; motion carries 6:0.

Mr. Dahilig: Thank you, Madame Chair.

Mr. Chun: Thank you, Madame Chair.

In the matter of Remand from the Hawai'i Supreme Court for Amended Decision and Order based upon Additional Evidence for CC-2015-20, Class IV Zoning Permit Z-IV-2007-1, Use Permit U-2007-1, Special Permit SP-2007-01, Tax Map Key: (4) 2-8-002: por. 005 = *Kaua'i Springs, Inc.* [Hearing Officer's Report and Recommendation of Contested Case Hearing; Certificate of Service (10/20/17) deferred 11/14/17, deferred 1/23/18.]

Mr. Dahilig: We are now on Item I.3. This is in the matter of remand from the Hawai'i Supreme Court for Amended Decision and Order based on additional evidence for Contested Case Hearing No. 2015-20, Class IV Zoning Permit Z-IV-2007-1, Use Permit U-2007-1, Special Permit SP-2007-01, Tax Map Key: (4) 2-8-002 portion of Parcel 005. This is the Kaua'i Springs matter. There are no additional written transmittals that have come in from either our department or the Petitioner, and I believe that the matter is still the same as it was heard back on January 23rd of this year.

Chair Aprisa: All right, thank you. Go ahead.

Mr. Thomas: Good morning, Madame Chair and Commissioners. Should we have appearances?

Chair Aprisa: Yes, please.

Mr. Thomas: All right, thank you. My name is Robert Thomas, and I am the lawyer for Jim Satterfield for the last 12 years. This is Jim Satterfield to my left, the applicant, on behalf of...well actually, on behalf of the applicant, Kaua'i Springs. Thank you for delaying this on your calendar the last couple of months to make this happen, so we appreciate that and the Planning Department's approach to this.

Deputy County Attorney Adam Roversi: Deputy County Attorney Adam Roversi, representing the Planning Department in this matter.

Chair Aprisa: Thank you. Do you want to, please, go ahead and give us a presentation?

Mr. Thomas: We were hoping that we could...I mean, we are going to respectfully ask...we think that the Planning Commission, when you asked Mr. Kimura to serve as the Hearing Officer, that was sort of the breakthrough, I think, that we needed to get rid of the 12-year...this case has been ongoing in one form or another for 12 years. Mr. Kimura, I think, did an admirable job, very even-handed, opened up the Contested Case for all public if they wanted to intervene; no one did. The Planning Department's approach, I thought, was quite reasonable. So unless you all have questions that we might be able to clarify, I think that the Hearing Officer did a very thorough job in his written report and we are willing to accept that, and the conditions and whatnot that he included in there – we think those are acceptable to us, so we would respectfully ask that you approve the applications as recommended in the Hearing Officer's report.

Chair Aprisa: Okay, thank you. Any questions?

Ms. Higuchi Sayegusa: Perhaps you can get the position of the counsel representing the Department.

Chair Apisa: Thank you.

Mr. Roversi: Madame Chair, Adam Roversi, again, for the Planning Department. Both for the benefit of the public and to refresh the Commission, this case has been going on for a long time, so I would like to make some general comments, and also state the Department's position on the various contingencies that are set out in the Hearing Officer's recommendation.

Some quick background information – again, this is also for the benefit of the public – this case hinges from applications filed back in 2006 that were for a Use Permit, a Special Permit, and a Class IV Zoning Permit to conduct water bottling operations on agricultural land outside of Kōloa. The Commission originally denied those permits. The case was appealed to the Circuit Court which overruled the Commission and ordered that the permits be granted. The Department, then, appealed that decision to the Intermediate Court of Appeals which partly overruled the Circuit Court and sent the case back to the Circuit Court; that was appealed to the Supreme Court which ultimately issued a decision overruling both the Circuit Court and the ICA, and remanding this case back to the Planning Commission to clarify its decision with regard to the Public Trust, specifically the Commission's obligations with regard to Public Trust water resources. Following that remand, this Commission referred the matter to Mr. Harlan Kimura as a Hearing Officer to conduct the remanded Contested Case Hearing, and now, before you, you have Mr. Kimura's recommendations following that remanded Contested Case Hearing.

I would like to speak to the Department's exception to just one of Mr. Kimura's Findings of Fact, and then generally comment on his eight, or is it nine, recommended contingencies. Finding of Fact No. 18 – as Mr. Kimura states in his recommendation, Finding of Fact No. 18 states, “[p]etitioner's rental of the Kōloa Water System is based upon the amount of gallons of water delivered to the Property for the Bottling Operation.... Petitioner does not purchase water from Knudsen Trust or Grove Farm.” The Department takes an exception to that Finding of Fact as unsupported by the record in the case. As the Supreme Court opinion stated, quoting Grove Farm's consultant, the prior management of the Knudsen Water System, “testified before the Commission that it managed the water and sold the water to Kaua'i Springs.” Finding of Fact No. 18 is attempting to draw a distinction between whether or not Kaua'i Springs is buying water from Knudsen Trust or simply renting the use of the pipes, and the water arrives at Kaua'i Springs' facility and it utilizes the water. On a certain level, that might appear semantic, but I think the record reflects that Kaua'i Springs purchases the water based...or pays a fee to Knudsen based on the number of gallons of water that it is extracting from the pipe. It is not paying a rental fee for the use of pipes. The wear and tear on the pipes is exactly the same regardless of whether Kaua'i Springs extracts water or not. The bill that Kaua'i Springs pays on a monthly basis is based on the gallons received. Again, the Department doesn't believe that this is dispositive one way or the other of whether the permit should or should not be granted, but I think it should be factually clarified to...by the same, if we were to follow the reasoning that the Hearing Officer proposes, one could argue that Kaua'i Springs itself is not actually selling water. They are renting you the use of a five-gallon bottle and charging you for a delivery service. I think that that stretches the reality of what is going on, so the Department takes the position, for

what it's worth, that Knudsen is selling water to Kaua'i Springs, Kaua'i Springs is bottling that water and, in turn, selling it to the public; that is really our only exception to the Findings of Fact. So we would propose an alternative reading to Finding of Fact No. 18 to simply state, "[p]etitioner purchases water from the Kōloa Water System based upon the amount of gallons of water delivered to the Property for the Bottling Operation.", and then strike the last sentence. So that is the Department's proposed alteration to the Findings of Fact.

With regard to the contingencies that Mr. Kimura has listed, briefly, Mr. Kimura is recommending that the Commission approve the permit application as it was modified during the Contested Case proceedings on remand. What the Commission originally considered and denied was a permit to both authorize the existing activities on the property but also to increase the amount of water usage significantly. Previously, when the Commission first heard this, Kaua'i Springs was using approximately 640/650 gallons of water a day for its existing water bottling operations. The application that came before the Commission was to increase that use up to 5,000 gallons a day, and that is the application that this Commission originally denied. Through the remanded Contested Case proceeding, the applicant amended their application to seek approval only of the 645 gallons a day that they had been using and that they have been using since this entire process started. The request for an increase has been stricken from the application, so what is before you now and what Mr. Kimura is recommending – I just want to be clear – is the authorization to utilize 645 gallons a day, and one of the contingencies we will discuss is that any future increase would have to have a separate permitting process back before the Commission.

So I just want to be clear of what is being asked. Mr. Kimura is recommending, generally, approval of the permit of 645 gallons a day with these various contingencies that I would like to discuss. Item No. 1 is with regard to the applicant presenting proof that a well modification permit would not be required for the Kahili Mountain Spring; this is on Knudsen Trust property. A little, quick background – in the original proceeding in this case, the Commission itself sought input from the Commission on Water Resource Management with regard to the legality of Kaua'i Springs' application. Generally and specifically quoted from the Supreme Court's opinion, this Commission asked the Commission on Water Resource Management to comment on whether the quantity of water that was proposed to be captured and bottled was a concern to the Water Commission. This was a reasonable request since the Commission on Water Resource Management is, statewide, charged with the duty of regulating water; this is not the typical duty or obligation of the Planning Commission. Speaking generally, the Commission on Water Resource Management more or less stated that they had no jurisdiction over the proposed application. It wasn't a matter of concern for them; Kaua'i is not a water management area. The details in the application, to the extent that they understood it, didn't impact the Commission on Water Resource Management's jurisdiction. Then they sort of stated as an aside – but maybe if the head wall at the spring had been modified after 1987, maybe Knudsen would be required to have a well modification permit. So that's how this issue even arose; it was sort of an aside to this Commission's primary concerns with regard to water usage and the Commission on Water Resource Management's responsibility. The Department recognizes that the applicant, Kaua'i Springs, does not own the property where this spring originates, has no control over the spring, (and) has no direct access to any records with regard to how the well was developed, the spring was dug. Kaua'i Springs may have comments on these various things after we go over this, but

the Department's central position is whether or not Knudsen Trust may or may not have been required to apply for a well modification permit if some sort of change had been made after 1989 is at best in the Department's thinking tangential to Kaua'i Springs' application.

As far as the Department of Public Works--

Chair Apisa: Could we interrupt here?

Mr. Roversi: Sure.

Chair Apisa: One of the Commissioners has a question.

Mr. Keawe: You are on page 49 of the Decision and Order, I believe. What you are basically saying is because the Petitioner has no record, there is no way of establishing whether that modification was done before May 30, 1989.

Mr. Roversi: The Department is recognizing that Kaua'i Springs doesn't own or control the property where its located, and whether those records exist or not, they would be in the possession and control of Knudsen Trust, not in the possession or control of the applicant.

Mr. Keawe: Right. So you have no way of ascertaining if that is right or wrong.

Mr. Roversi: The Planning Department certainly doesn't, no.

Mr. Keawe: Right.

Mr. Roversi: But aside from the point of access to those records -- this sort of speaks to the elephant in the room -- the elephant in the room is Knudsen has this water system, and what is the legality of that. Kaua'i Springs has an application for conducting an activity on an acre of land. So the notion or the issue of well modification permits is, in substance, an issue for Knudsen Trust; that is not the applicant in this case. As to the substance of Kaua'i Springs' application, it is the Department's position that it is somewhat tangential to whether or not the permit should be granted. Have I answered your question, Commissioner?

Mr. Keawe: Yes.

Chair Apisa: Okay, continue.

Mr. Roversi: The second condition has to do with Department of Public Works' road improvements. The Department has no further information from Public Works, perhaps the applicant does, but just to point out that the requirement of the turning lane and possible road improvements had to do with the expected increase in trucking traffic that was going to come along with the drastic increase in the amount of water that was going to be bottled and shipped out of the location. So the Department has no knowledge, one way or the other, whether, given the reduction in the requested use back to 645 gallons a day, the Department of Public Works would have any concern one way or the other, so I have no information about that contingency.

Department of Health regulation of the water system – again, this sort of became an issue in a very roundabout sort of way. The DOH regulation of Knudsen Trust’s water system was raised in this case because Knudsen Trust didn’t want to engage in a PUC proceeding to determine whether or not they were a regulated entity under the Public Utilities Commission. Previously, 11 homes in the Kōloa area were provided with water through this system, the Kōloa Water System. They were regulated, as far as water quality, by the Department of Health. Department of Health recognized through these proceedings that the Kaua‘i Department of Water has taken over water service to those homes. The Knudsen’s Kōloa Water System, as we’ve called it, is no longer being regulated by the Department of Health because they are not providing domestic water service to these homes anymore. So I believe that the issue of whether or not Department of Health is still regulating was presented as sort of circumstantial evidence that this water system is not serving the general public, and therefore, we could understand it as not being under the jurisdiction of the Public Utilities Commission, which had, back in 2006, been a concern of the Planning Commission. That is why the Department of Health is even raised in Mr. Kimura’s contingencies. The Department recognizes that, to the extent that the Department of Health is even an issue in this case, they have no management control over this water system to date.

The next item here is the establishment of a monitoring weir on the tank that would measure the amount of overflow water that leaves the tank at the bottom of this water system and then flows into Waihohonu Stream.

Chair Apisa: Excuse me. If we could interrupt one more time, we have another question from a–

Ms. Nogami Streufert: I’m sorry. One of the DOH recommendations was actually to include toilets going directly to the sewer system. Is that contingent upon the 5,000 gallons? Or is that contingent upon any operation?

Mr. Roversi: I am unsure. The application that the Department of Health was considering at the time was for the 5,000 gallons a day, so presumably their recommendation was based on that application. I can’t speak to whether their recommendation would be altered by the fact that the amount of use has been altered; I have no information on that.

With regard to the monitoring weir, Mr. Kimura proposes that a gauge be installed on the tank to measure the amount of water that is flowing into Waihohonu Stream. The idea being that whatever Kaua‘i Springs withdraws from the pipe is an amount of water that will be subtracted from the amount that will overflow into Waihohonu Stream. Mr. Kimura’s conclusion is that 645 gallons is no big deal, but we need a baseline established so that any future request for an increase has something to be measured against. Following the issuance of Mr. Kimura’s recommendation, it has been represented to the Department that a gauge already exists on the pipe that can provide, essentially, the same measurement that the proposed new monitoring weir would provide, so the Department is willing to stipulate that that requirement could be stricken with the understanding that a gauge already exists to achieve the same purpose – measurements of the total amount of flow that could be measured against the amount of Kaua‘i Springs’ water usage.

Chlorination at the Maluhia Road tank – as it has already been mentioned, the water from the Maluhia Road tank used to serve the domestic water uses of 11 homes in Kōloa. Now that that domestic use is no longer happening, it was brought up...taking a step back. One of the concerns about Kaua‘i Springs’ use is a reduction in the flow of water into Waihohonu Stream and its effect on the biological environment. It was brought up, observed, that all of the water dumping into Waihohonu Stream, for however many years, has been used for domestic water services; all chlorinated. That simple fact could be bad for Waihohonu Stream as opposed to an instream benefit. So we are thinking about what is the negative effect of taking water out of the tank that then will not flow into the stream, and we wondered to ourselves well, are we, in effect, damaging the water shed by dumping all this chlorinated water in there. Mr. Kimura and the Department concurs that it would be a public benefit no longer to chlorinate that tank now that it is not being used, but we recognize, also, that the applicant does not own or control that tank and has no control over whether it is chlorinated or not chlorinated. Again, that is a Knudsen Trust issue as to what happens with that tank; perhaps the applicant can provide some input on whether Knudsen has agreed to cease de-chlorinating the water. I don’t know why they would continue the expense of doing so since it is no longer providing water to any homes, so there doesn’t seem to be a need for it.

Free water during emergencies – the Department supports this position. It was a representation by the applicant during the Contested Case process and was used to demonstrate, sort of, the public good of allowing Kaua‘i Springs to have its continued operation, so the Department supports the inclusion of that contingency.

The next item is no increase above 645 gallons per day without future approval of the Commission. The Department approves and supports that contingency.

The Department supports the three-year permit timeline subject to a renewal. The Department believes that is in keeping with the Commission’s obligation to continue to oversee the use of Public Trust water resources.

And then lastly, the final item is Mr. Kimura is recommending the reopening of...let me get the exact language. His contingency No. 9 is recommending that the Planning Commission reopen the hearing in this Contested Case and that the Petitioner affirmatively establish the exercise of Native Hawaiian and traditional and customary rights are protected notwithstanding the Bottling Operation. The Department recognizes that the County has a constitutional right to protect and preserve Native Hawaiian, traditional, and customary rights, and we recognize that under the Public Trust analysis framework that the Supreme Court defined for us and sent back on remand, the Commission has an obligation under that Public Trust framework to analyze whether traditional and customary rights have been negatively impacted by a proposed action or an application. It is the Department’s position that the broad proposition that the hearing should be reopened and force an affirmative establishment of protection misstates the Supreme Court opinion to a certain degree. I would like to read to you directly from the Supreme Court’s decision. I’m quoting – the Supreme Court says, “[i]f there is a reasonable allegation of harm to one of the uses protected by the Public Trust...” – and this is not part of the quote, but traditional and customary rights are one of the uses expressly protected by the Public Trust – “...then the applicant must demonstrate that there is no harm in fact or that any potential harm does not

preclude a finding that the requested use is nevertheless reasonable and beneficial.” The first aspect of that holding is that if there is a reasonable allegation of harm to traditional and customary rights. For context, I think it is important to note that the Supreme Court’s Water Law jurisprudence, generally, is coming from old sugar cane diversions of streams that are dewatering or significantly reducing the flow of water in a natural stream that is used by Native Hawaiian practitioners downstream for taro cultivation. In all of those cases, traditional and customary rights are an issue, and that is the primary reason that the case even ended up in the court in the first place, is because taro farmers and fishermen and people who use the stream are challenging the sugar cane’s diversions. During this case, in the prior proceedings before the Planning Commission...let me step back. This case is not about the reduction of water from a stream; this is a well in a mountain with water coming down a pipe. Throughout the previous Contested Case Hearings and the public comment in that hearing, it is the Department’s position that, at least on our review of the record, that initial step was never made; there was never any reasonable allegation of harm to Native Hawaiian or reasonable allegation of harm to traditional and customary rights in the prior proceedings so as to trigger this obligation to affirmatively demonstrate no negative impact. The second step and this would be the Department’s second position that even if there had been – and our review of the record at least hasn’t found any – even if there had been some sort of allegation of harm under the Public Trust framework that the Supreme Court set out, the use of 645 gallons per day out of a daily flow of 270,000 gallons is sufficiently small or de minimis that even if there had been an allegation that the water use was impacting traditional and customary rights, it is sufficiently small to satisfy the second phase of the Supreme Court’s holding that...so once there is a reasonable allegation of harm, the second step is that the applicant has the obligation to show that either there is no harm or that the potential harm does not preclude a finding that the requested use is nevertheless reasonable and beneficial. Given the incredibly small amount of water out of the total that is flowing into the stream is only 645 gallons, we think that, on the current record, that second phase of the Supreme Court’s test has been met; that any potential harm, if there were an allegation of harm, is sufficiently de minimis, that it wouldn’t be sufficient to deny the permit.

I just want to make one final comment because it was a concern of the public at the prior...back in 2006 in the original Contested Case Hearings. There was much discussion about the commercial use of water as a Public Trust resource. I think it is important to note that the Supreme Court, in the framework that they set out, does not preclude the private commercial use of water; that is not illegal. However, it is subject to heightened scrutiny, and that is what the Supreme Court’s decision is about. So we have lots of protected uses that the Public Trust can be utilized for. Any private commercial use, which would include selling water and a bottling operation, is subject to a very high-level of scrutiny and has to go through all of these steps, and which Mr. Kimura in his recommendation walks through, but there is no absolute bar to the commercial use of water. I think that that has been a presumption by many people in thinking about Public Trust water resources. That, by no means, minimizes the obligations that the Planning Commission has to strictly scrutinize those commercial-private uses, but I think it is important to note that there is no legal bar to commercial use of water under the framework that the Supreme Court gave us and directed us to follow.

Unless there are any questions, that’s the gist of the Department’s position.

Chair Apisa: Thank you. Questions?

Mr. Ho: Mr. Roversi, with that explanation you gave us that water can be used for commercial use, I would think the bar would be something that is useful or beneficial, and that is up to an individual's interpretation?

Mr. Roversi: Well, the Supreme Court describes the reasonable and beneficial use standard, and there has probably been 15 law review articles written on what exactly does that mean, and it is admittedly vague; the reasonable and beneficial use standard. I could take a moment and try to find the Supreme Court's quote about that, but it essentially is ultimately a subjective decision based on an array of factors that the Supreme Court sets out. It has to do with the preservation and protection of what the protected use is that the Public Trust water resources are supposed to be put towards. I am not going to remember all of them off the top of my head, but those have to do with the preservation of the instream environment and the ecological health of streams, the protection of traditional and customary Native Hawaiian rights, domestic water use for drinking is a protected use; there is one more that I am forgetting. But those factors, and then making subjective determinations as to the degree of impact or degree of harm to all of those factors. Am I answering your question? It ultimately is a subjective question to be answered by the Commission.

Chair Apisa: Are there any other questions from the Commissioners?

Ms. Nogami Streufert: If I could ask one question. The rental versus the purchase is an interesting one because if you are saying you are purchasing, you are purchasing water, but if it is a rental, it is of the equipment. In terms of native or customary rights, does that have an impact on that? Because if it is just equipment, then you don't really...there is no native or customary rights to the equipment. But if it were water and you are purchasing water and if it is the water that they are purchasing or if it is the location of where they are purchasing the water, then that may be a different issue because if you were downstream in Waikomo, all the way down to the beach and then you picked it up – the same water but obviously it has been in the stream – is that part of the...would there be the same issues with native and customary rights? Or is it just because of the location that it is? And it is close to where some other kind of rites, r-i-t-e-s, might be practiced.

Mr. Roversi: I am not really sure. I can say that the reason that the Department brings up an issue with sale versus rental of pipes – and it is not because of traditional and customary rights – but the Department didn't want to establish a precedent with regard to Knudsen's water pipeline system as to whether...if they sought to sell water to somebody else, to some other business, to some other group of people, to their own development if they did a housing development in the future. We are uncomfortable establishing a precedent that...in any of those activities, they are not actually selling any water, they are just renting out the use of a pipeline; that just was not something we were willing to assent to.

Ms. Nogami Streufert: So at this point, does Knudsen own the water—

Mr. Roversi: No.

Ms. Nogami Streufert: –that they are purchasing?

Mr. Roversi: Clearly by the terms of the Supreme Court’s decision, they do not own the water.

Ms. Nogami Streufert: So who are they purchasing the water from?

Ms. Ahuna: It is their pipe. So what...

Ms. Nogami Streufert: But he is saying he wants “purchase” and not “rental”.

Mr. Roversi: If I may–

Ms. Ahuna: So I think, from what I am hearing...can you go back to how it’s...from my understanding, it is coming from the water well, which used to be owned by Grove Farm, correct?

Mr. Roversi: Correct.

Ms. Ahuna: Yes, and then it is going down into the pipe that is being rented or so-called used by Knudsen; that is what I am trying to understand what Adam is saying, is that (inaudible).

Mr. Roversi: There was a tunnel dug into Kahili Mountain in the early 1900s, if not late 1890s.

Ms. Ahuna: In reference to rent.

Mr. Roversi: The water fills that tunnel, which is capped with a concrete head wall and, by gravity, flows into a pipe. So the well exists on Knudsen property, the pipe travels across Knudsen’s property and is owned by Knudsen, and the water that flows down the pipe is gauged and measured by Knudsen, or previously by Grove Farm who managed the pipeline on behalf of Knudsen. The water is extracted at Kaua’i Springs’ location and the amount of water being extracted from the pipe is gauged, and Kaua’i Springs pays Knudsen a bill, monthly, based on the amount of water that is flowing into Kaua’i Springs’ facility. So on its face, whether Knudsen owns the water coming down the pipe or not, Knudsen is receiving money for the amount of water used by Kaua’i Springs.

Ms. Nogami Streufert: So Kaua’i Springs is paying for the water is what you are saying.

Mr. Roversi: That is the Department’s position.

Ms. Ahuna: The position is...that is the issue here. Are they paying for the water? Or are they paying for the use of the pipe because they have to maintain the pipe? So that is the (inaudible) that we carry.

Chair Apisa: I think he would like to speak and give an answer.

Ms. Ahuna: From my understanding (inaudible).

Mr. Thomas: Adam points out a good point, and I think when we are talking about Finding No. 18, we would be okay with the changes he suggests, only not deleting Footnote No. 15; keeping that and just moving that up. I think what the conceptual problem is, is that the law in this case says one thing, and yet we all purchase water. The law that the Hawai'i Supreme Court has laid down is that all water – whether it is rain water, the ocean, waters in streams, water coming underground, this water, the water coming out of your tap – it is what the Supreme Court says is incapable of private ownership. So the County may own the water system that provides water to the taps here in this building, but under the Law – capital “L” – the water that comes out, it belongs to the public at large, and that is really the Public Trust concept. Yet, every one of us is familiar with paying our water bill based on a water meter and so we think we are buying water. We go to the 7-11 and pull a bottle of Menehune Water, and oh, I'm buying water. Technically under the law, that is not correct, but in this case we are sort of trying to figure out...given that the meter here is just like every other water meter where you are kind of gauging how much Kaua'i Springs pays to Knudsen every month based on something, it is based on the flow of water past that. Now, technically speaking, and I think that is Adam's point is under the law, the Supreme Court has said well, you can't buy something, right; you can't buy, from Knudsen, water that Knudsen technically doesn't own because it belongs to everyone, and that was the point, among others, of the reason the whole case went up to the Supreme Court the first time. So we are looking for a way to try to harmonize the Supreme Court's pronouncements with that with the reality that when we use water – let's put it that way – when all of us use water, we are not actually buying the water, technically; we are buying the use of the public's water. I think Adam's suggested changes to that account for that, and I can see why the County would not want to acknowledge that the reality is we've got a gauge on the system and pay according to what the gauge tells us every month. So I think with those changes...but Footnote No. 15 that Mr. Kimura included on page 19 explains that at the second and third to the last sentences where he was trying to figure out, well, if Knudsen does not technically own the water, then what exactly are you buying, and that was the closest he came up with. I think, ultimately, we agree with Adam's approach to this and the Planning Department's approach that, one way or the other, you don't have to resolve that to decide to issue the permit because what was important for purposes of the Public Trust that the Supreme Court sent back to you was that you go through the process – this very process that we are dealing with here and that we dealt with in the Contested Case – was acknowledging that the public has rights. Those rights were judged and gauged during the course of the Contested Case, and it was found that ultimately, however it is characterized, that 645 gallons a day out of 275,000- to 300,000-gallon per day flow was so low we couldn't gauge it. We tried to draw a graph that you will see in here, but we couldn't make it large enough to even show anything above zero in terms of the baseline use. So I think on that we agree, and the only thing we would ask to add to Adam's suggested edits to Paragraph 18 would be to keep Footnote No. 15 because we think that explains this gap between practice and what the law is. Because technically speaking, all of us in our homes or apartments, we pay the water company where I'm from or you pay the County. What are you paying them for if you are not paying them for the water you use in your house?

Yes?

Mr. Ho: Following that line of questioning, what are you buying, then, if the water is free? Are you paying for the bottle?

Mr. Thomas: Paying for the use, perhaps, of the water. Nobody owns the water. We are paying for Mr. Satterfield's...for their effort in maintaining the system, right? That, to us, makes sense based on the amount of water that flows past his meter; that is his proportionate share of maintaining the system. So in that sense, whether he is...I wouldn't call it renting the water, but it is a maintenance fee for maintenance of the system, and then when Mr. Satterfield's clients...I won't say buy the water, but when he delivers water to them, they are paying for the delivery service of the water, even though the water itself remains publicly owned. I mean, that is the best characterization that we can come up with to try to harmonize reality with what the law requires in terms of ownership.

Chair Apisa: I guess I would ask the Commissioners, are we ready to make a decision or do we want to defer?

Ms. Higuchi Sayegusa: I believe there are still members of the public that are interested in testifying today as well.

Chair Apisa: Yes, they still have to testify, too. That's right. I know Maka'ala deferred her testimony.

Are there any other questions? Or are we ready to move on to the other testimony?

Ms. Ahuna: I have a quick question for Mr. Satterfield. Where is your water sold? Or how do you get it out to the community?

Mr. Jim Satterfield: I am a mom and pop organization--

Ms. Ahuna: Or just share a little bit about Kaua'i Springs if you can.

Mr. Satterfield: Kaua'i Springs sought to do what we were doing when Iniki hit and all the cars were stacked up to the spring that was only gravity-fed and all the power was down, so nobody had water. I, coming from Alaska and a bottled water company in Alaska, said we need to put that water in a bottle and get it to the people instead of hauling water from outside the island to the wettest place on earth. So we started putting it in five-gallon bottles and taking it to homes and offices and the County buildings. We pretty much just started the service of delivering that water to the people of Kaua'i.

Mr. Thomas: May I clarify one thing, too? And maybe you will want to hear it directly from Jim on this, but there is another...there is a separate company that has nothing to do with us that is out there called...what is called, Jim?

Mr. Satterfield: Kaua'i Artesian is--

Mr. Thomas: That's not us.

Mr. Satterfield: --not us.

Mr. Thomas: I mean, we want to make sure...that's not us. Satterfield's company does not...you won't be able to go down to 7-11 or the grocery store—

Mr. Satterfield: We are the only water bottled on Kaua'i.

Mr. Thomas: Yes. But you won't be able to go down to the grocery store and buy the small ones. He only does the five-gallon delivery to homes, offices, and government offices for the water cooler types. He doesn't do the small individual ones you will get in the convenience store or the grocery store.

Chair Apisa: Kimo.

Mr. Keawe: I had one question. Adam, with regard to...the first eight conditions I understand. Condition No. 9 was about reopening the hearing, and your position is because the amount of water that is being withdrawn from this system is so small that it would not have any impact on traditional rights or customary rights because the volume is so small. Is that right?

Mr. Roversi: That is the second part of the Department's position. The first part is that under the Supreme Court's framework, there needs to be a reasonable allegation of harm before you even need to get to that second step.

Mr. Keawe: A reasonable allegation of what?

Mr. Roversi: A reasonable allegation of harm.

Mr. Keawe: Of harm, okay.

Mr. Roversi: During the proceedings to date – public testimony and the prior Contested Case Hearings – based on my review of the record at least, there were no allegations of harm to traditional and customary practices so as to trigger moving to the second step, which you have just discussed, or so as to trigger a general affirmative duty on behalf of the applicant to go and do a cultural impact survey, or something to that effect, that you might have to do if you were doing a resort development on the beach and there were allegations that it was going to affect places where people fished and gathered and, obviously, practiced traditional and customary rights.

Chair Apisa: Any other questions from the Commissioners? Are we ready to hear some other testimony?

Ms. Nogami Streufert: Just one more question, if I could.

Chair Apisa: Okay.

Ms. Nogami Streufert: No. 20, Meeting the Demands of the Public Trust Doctrine; that's on page 44. The first sentence is about the purity of the spring water, but the second sentence is about bottled water delivered by Petitioner to its residential and commercial customers are for

consumption by residents and visitors of Kauaʻi. If that were to be sold outside of Kauaʻi, does that pose a problem? Whomever; Mr. Roversi.

Mr. Thomas: Do you want me to start off, Adam? Okay. No, it shouldn't. Again, the Public Trust is a matter of State constitutional law, so technically...or I would say no.

Ms. Nogami Streufert: Can you explain why it is in there then?

Mr. Thomas: I think it is just to...it is a factual determination that this water is not being shipped and I think the concern that we have seen on that is actually coming from a series of older water law cases that got decided by our Supreme Court probably 30 to 40 years ago involving the Hanapēpē Stream and diversions of water outside of the original ahupuaʻa of where they are coming from. What I am guessing is that Mr. Kimura – I mean, that was one of the cases that we have as background in this – was making sure that did not become an issue by saying wait, did you guys look at whether there is any outside of ahupuaʻa use of the water. So I think he was just being – I can't speak for him – but I think he was being careful about that case. I mean, if there was...in the case of...like the sugar companies would take water from one side of the island to the other or from water shed to water shed, then I think it could be a question of Public Trust questions. So I can't imagine...or I guess I could imagine that if it is taken from one island to another island that that could trigger that same type of question, and then it would be the impact on the local stream and the need for the diversion to the other island, but it is just something that we didn't face in this case because it wasn't an issue. But the short answer to your question is it is conceivable it could be, I think, under the way the law is structured right now.

Ms. Nogami Streufert: Okay. If I could ask one last question of Mr. Roversi. Now I have forgotten it. I will defer then. Thank you.

Chair Apisa: Okay. (If) no further questions, then thank you very much.

Mr. Dahilig: Madame Chair, we do have one individual signed up to testify on this agenda item, and that is Makaʻala Kaʻaumoana. She was here at nine o'clock to sign up and then she deferred.

Ms. Kaʻaumoana: Aloha.

Chair Apisa: State your name again for the—

Ms. Kaʻaumoana: I always do.

Chair Apisa: Okay, thank you.

Ms. Kaʻaumoana: Aloha, Commissioners. I am Makaʻala Kaʻaumoana, vice chair of Hui Hoʻomalū I Ka ʻĀina.

Ms. Kaʻaumoana read her testimony for the record (on file with the Planning Department).

Ms. Ka'aumoana: Based on the comments that we just heard, I do want to point out that the difference between this water and the water that comes out of your tap is that that water, although clearly still Public Trust water, is coming from a managed and regulated place, a managed and regulated facility and process; this water is not. That is why CWRM was not involved because this is not a managed area; we don't have those on this island. So there is a difference in my mind between tap water that we all drink and pay for, and maybe we are only renting the pipes; nonetheless, that is all under a regulated and managed system. There has been none of that in this situation. Now, we also heard today that there are two extractors. So the solution to this was—

Mr. Dahilig: Three minutes, Madame Chair.

Ms. Ka'aumoana: The solution to this was asked earlier in the process of...did Kaua'i want to make this a managed area, and the answer, according to the record, is no. So we didn't want to manage it; I didn't support managing it because I didn't want this use to continue. Mahalo.

Chair Apisa: Thank you.

Ms. Ahuna: I have questions for Maka'ala.

Chair Apisa: A question.

Ms. Ka'aumoana: Aloha, Kanoe.

Ms. Ahuna: Aloha. Maka'ala, can you share how you feel it is against the Public Trust Doctrine?

Ms. Ka'aumoana: I think we don't know enough about this particular situation and that is why I call in my testimony for an EIS. I was here in 2006 when the call was put out for cultural practitioners to describe how this use may be impacting our practices. Nobody goes up there; it is private land. So the statement made earlier that there are no practices going on up there — we don't actually know. We don't know; nobody stepped forward. Water is a Public Trust resource; there is no question about that. How we manage it and regulate it is the question here, and whether or not we want to privatize it.

Ms. Ahuna: Just to clarify, because this went (from the) Supreme Court back to the Commission — we are probably all new commissioners since then.

Ms. Ka'aumoana: Oh yes.

Ms. Ahuna: I would hate to see it go back again, or something, you know. I just wanted to get clarity on your understanding of management versus...management of Department of Water, so to say, and management of this system that was under Grove Farm, now is under Knudsen Trust. How do you see that different?

Ms. Ka'aumoana: I think a municipal use...the same thing would be true with water going the other way – the wastewater system, right? We don't just let people privately dump it somewhere. We don't let people privately consume it either because it needs to be regulated and managed because it is part of the environment. So our municipal water comes from wells and it is regulated and it is treated, and we can trust that it is healthy and clean, and we know how much we are taking, and we monitor the aquifers, and we pay attention to how much is there and so forth. We don't actually know any of that for this place because it is not a managed area, so there is a whole lot of unknowns here. And what you are being asked to do is allow the commercial sale of a resource that we don't actually know much about; we don't. We don't know the status of the pipes. We don't know if there is lead. We don't know a lot of stuff. Now, Satterfield is going to say he treats it all and everything is all hunky-dory, but there is an awful lot of water spilling before it ever gets to him; chlorinated water. So, to me, the difference between tap water and this water is that that is a municipal, government, agency-regulated and managed resource; this is not. And we are opening the flood gates – pun intended.

Chair Apisa: Okay, thank you. Now that we have heard, are we in a position to make a decision or are we going to ask for a deferral?

Ms. Higuchi Sayegusa: There are more people if you wanted to entertain them.

Mr. Dahilig: These individuals weren't here at nine o'clock, but if they want to come up and testify, it is up to you, Chair, but they are supposed to come up and sign up for testimony ahead of time. It is your discretion.

Chair Apisa: Yes, go ahead. We will allow...

Ms. Sharon Goodwin: My name is Sharon Goodwin, for the record, and I live in Wailua Homesteads. We talked about the Public Trust lots today. The two attorneys here both talked about the Public Trust, and said some salient things about that trust, which all of you, as appointees to the Commission, have the responsibility of protecting. Thank you. But I wanted to say that in addition to the environment, and traditional, customary, and Native Hawaiian rights, and pertinent rights, such as the water rights of kuleana and taro lands, and domestic water uses that nowhere was mentioned today, that reservations for the Department of Hawaiian Homelands is protected. And also, Public Trust purposes have priority over private commercial uses which do not enjoy the same protection, and that is why we want you to take this to the highest level of scrutiny as your prior Planning Commission – many years ago – did; we want you, too.

Chair Apisa: Thank you. Any questions? Okay, thank you very much.

Ms. Goodwin: Thank you.

Chair Apisa: And I believe we have one more.

Ms. Sandra Herndon: Sandra Herndon for the record. I really appreciate the opportunity to have the background on...and I appreciate the education that is presented here. Some of the questions

in my mind that came up during the presentation by Mr. Satterfield and his attorney and the County's attorney is the fact that we've got two major corporations that are not being held accountable for this; Grove Farm – they are misusing Public Trust water resources, and the Knudsens are also misusing it. If the Supreme Court says that Mr. Satterfield and Kaua'i Springs has to abide by this, why do we not hold those two companies accountable also? That is really an issue. I invite you to take a deep breath and look at the elephant in the room because it is always there. Thank you.

Chair Apisa: Any questions? Thank you. We will take a 10-minute break now and then we will be back in 10 minutes.

The Commission recessed this portion of the meeting at 11:50 a.m.

The Commission reconvened this portion of the meeting at 12:00 p.m. with five members present (Ms. Nogami Streufert was not present).

Chair Apisa: Call the meeting back to order.

Is the Commission ready to make a motion or to call for a deferral?

Mr. Keawe: Where is Commissioner Streufert? Oh. I would like to make a motion to defer this item for two weeks to the next meeting, and also schedule an Executive Session with regard to that.

Chair Apisa: Do we have a second?

Mr. Mahoney: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion passed unanimous with one absent; 5:0.

Mr. Dahilig: Thank you, Madame Chair.

Ms. Nogami Streufert entered the meeting at 12:01 p.m.

NEW BUSINESS

Class IV Zoning Permit Z-IV-2018-5 and Use Permit U-2018-4 to construct a new covered play court on the Waimea Canyon Middle School campus in Waimea Town, situated approx. 1,200 ft. north of the Kaumuali'i Highway/Huakai Road intersection, further identified as Tax Map Key: 1-2-006:033 (portion), and containing a total area of 15.5 acres = State of Hawai'i, Department of Education. [Director's Report received by Commission Clerk 3/13/18.]

Mr. Dahilig: Given who we have in the audience, if I could ask if we could take Item F.2.b. relating to Waimea Canyon Middle School before we hit the lunch hour. Again, Madame Chair,

just as a heads-up, the agency hearing has not been closed on this particular item. Mr. Bukoski will be making the presentation on behalf of the Department on this. But I think the questioning that has gone on concerning the permit, as well as what the Commissioners are pretty familiar with, at this point it is really an issue of the location of the court. The public testimony has come in regarding whether...not necessarily that the courts aren't wanted, it is where the courts are.

Just to add a little bit of further information, we have been going through the break on this. I have had my deputy director in contact with Representative Morikawa from the west side of the island. The \$3 million that is earmarked for this particular project will lapse at the end of June 30th. So if there is no encumbrance of those funds before June 30th of this year, the \$3 million could lapse. Another thing that I do understand is that the design of the project of where it is was meant to avoid a current drainage swale where some members of the community want the courts to go. Now, it is not to say that they can't design around it, so what we were checking with the representative's office was whether or not in this year's supplemental budget monies could be added to the \$3 million in order to design around and accommodate the current drainage pattern of the campus. What I am hearing is that that would yield an extra million dollars or so in additional costs, which the rep said would not be able to be added if it was appropriated out of this session. So the money would lapse and, essentially, you would have to go in for a four million-dollar new appropriation for that, so just to keep those items in mind in terms of where everything is going. I know that this is a difficult decision, but there is a budgetary appropriation from the State legislature that could lapse at the end of this fiscal year concerning this.

Anyway, Mr. Bukoski.

Mr. Chance Bukoski: Aloha, Chair and Commissioners.

Chair Apisa: Please, go ahead.

Mr. Bukoski: The Director's Report pertaining to this matter. Before I begin, I would just like to say, for the record, that I have the affidavit in my hand right here. I can pass it out as well before I give my Director's Report.

Mr. Dahilig: Again, this is the affidavit that is required of all applicants to evidence that they have met the mailing notification requirements, so this is what we have gotten from them as part of that on record.

Chair Apisa: Thank you.

Mr. Bukoski read the Summary, Project Data, Project Description and Use, Additional Findings, Preliminary Evaluation, and Preliminary Conclusion sections of the Director's Report for the record (on file with the Planning Department).

Mr. Bukoski: That concludes my staff report and I will hold off on the Conclusion and Recommendation. Thank you.

Chair Apisa: Thank you, Chance. Applicant could come forward, please.

Mr. Bukoski: Can I note something as well?

Chair Apisa: Yes.

Mr. Bukoski: There was also a supplemental I provided for you guys. There are three exhibits; Exhibit C—

Mr. Dahilig: Chance, we received that for the record already.

Mr. Bukoski: Oh, okay.

Ms. Aolani Yamasato-Gragas: Hi. My name is Aolani Yamasato-Gragas. I am the planner on this project. Next to me is Justin Matsukawa, he is the architect, and Bill Arakaki, he is with DOE. I would just like to thank Chance for providing such a thorough report, and the help of the Planning Staff.

As you know, Waimea Canyon Middle School is a Title I public school, and that means at least 40 percent of the student population is economically disadvantaged. The school opened in 1972 and there are about 400 students from Grades 6 to 8. It is the only middle school in the Waimea complex, so it services Kekaha, Kalāheo, ‘Ele‘ele, Hanapēpē, Kaumakani, Makaweli, Pākalā, and Māpā. They have actually been requesting from the State for several years – over 10 years – they have been trying to get this covered play court and they finally received the money last year. It kind of went through a quick process, but we looked at alternative sites on campus.

The location that was chosen was the one that is north of the parking lot. Alternative locations were based on working with the school on which sites they would like to see the new structure, so we also looked next to the locker rooms, which is at the bottom of the site, and then also at the back of the site, the northwest corner. The northwest corner is actually out of the question because there are sink holes there. If you look at the green space in the middle, there is actually a stage and that is where they have their performance area next to the band room. There is also a new play structure right behind the locker room. They recently got, I think, like artificial turf, and they have this new exercise kind of equipment right against the locker rooms, so that green space is kind of out of the question. But the other area that we looked at was right over here, in this area, and the reason why we chose this area instead of that area is just based on...there are a lot of utilities in that area, it is further from the access for fire trucks and for...there are restrooms next to this other area. So the area that we were looking at is where there is an existing playground; there are play structures and tetherball courts, so it is right here. These are the tetherball courts and then these are the play structures. So that was the area that just seemed to make the most sense just because it is flat, there is nothing there, there are no utilities, there is no drainage compared to the other site that would just be more costly and just more things to kind of consider, like the drainage and the utilities. But I think...I guess it is just based on the whole timetable of requesting the funds and getting it funded and getting the grant money that expires...because we are hoping to get it out to bid this year. I guess, like he said, it lapses in June 2018, but other than that, everything else, we were just going to go through the standard agency approvals and all that, and then go into construction. I’m not sure if you would like to say—

Mr. Dahilig: I just want to...you said lapse in '19, not '18?

Ms. Yamasato-Gragas: No, '18.

Mr. Dahilig: '18, okay.

Ms. Ahuna: It has to be encumbered by '18.

Mr. Dahilig: By '18, right? Okay, I just want to...

Chair Apisa: Anything...

Mr. Bill Arakaki: Hi. I am Bill Arakaki, complex superintendent for Kaua'i. In support of this project, Waimea Canyon is one of three middle schools on our island, and to have a covered play court will be a great asset for our students there. As you know, physical fitness, exercise, and healthy living is something we are trying to promote for all of our students. Statistically, our adults and families have issues with diabetes, overweight, and things like that, so how do we continue to build the infrastructure for them to be able to exercise and do these activities within the area?

Also, the play court will be used for special events, such as the band concerts. Now, as far as evening events, there are not much evening events that will impact as far as night noise and things. The band concerts – they usually have a Christmas concert, which is the winter concert, and the spring concert, which is usually done before 8:00 p.m. Other than that, it is the daily classes that will be running their P.E. activities during that time.

As this lady and gentleman talked about, they researched the many areas that could be possible sites for that, and the area in which is being proposed is where the original play area was for the elementary school. Now, again, it is adjacent to the community homes in that area, which poses an issue for our residents. For the DOE, we got the money from Representative Morikawa, and we don't want to lose that money, so how do we...when I go back to...we are going to have a principals meeting today to help with the Principal to really mitigate...you know, what are some solutions that we can do to...as far as noise and things. We want to be attune to the community's concerns and yet, how do we not lose the money and the project? Because, again, what may happen is if we don't meet the time limits as far as the budget needs to be used or in expenditure, we may not have this done in the next 20 years, so it would be a loss for everyone in the community.

Yes, definitely, it is a sensitive matter. Again, I will go back to the Principal to really try to mitigate and talk to people to see how we can really come up with solutions. Again, if there are possibilities as far as the areas, you know, if there is more money, then that would be great. We just want to be able to make sure that this will happen.

Chair Apisa: Thank you.

Mr. Dahilig: This is part of a bundle that also includes a Use Permit, so there are potential, I guess, opportunities to insert restrictions for how the building could be used if constructed. Is the DOE amenable to restrictions along the lines of no amplified music in the building, and that the building should only be used during daylight hours, or if there is screening that can be put along the north and eastern sides of the building to mitigate noise? Are you amenable those types of usage restrictions?

Mr. Arakaki: Yes, definitely, to ensure that we can resolve the sound issues. I have already been told by the community that they can hear the PA system, you know, the announcements from the principal, so how do we mitigate...you know, facing speakers. As far as loud music playing, like a concert kind of thing, it would be only the band situation on those two evening nights, so definitely we will do that. We do have a use of facilities protocol where the County may use facilities, but again, this is, like, for basketball, community leagues, and so on. So how do we assure that as far as the sound and at night, events that it's limited to a certain time so it doesn't interfere or impact the area?

Mr. Dahilig: That would be the use restriction; is that, essentially—

Mr. Arakaki: Yes.

Mr. Dahilig: You know, if we came in with a condition as a suggestion to the Planning Commission that we say daylight hours only.

Mr. Arakaki: Yes.

Mr. Dahilig: I mean, it would potentially foreclose that evening usage, but if we just said no amplified music, so that...you know, if you are using a tuba, a tuba is not amplified, it is loud but it is not amplified – I didn't used to play tuba – and if it is during daylight hours only. Is DOE willing to have restrictions that go that narrow for the usage (inaudible)?

Mr. Arakaki: (Inaudible) Ms. Speetjens, definitely, she wants this project to move forward, so most of the night events will be held in the cafetorium there, where it is in the middle of campus, which doesn't impact as far as the noise and so on, so she would use that more as far as events.

Mr. Dahilig: So a night restriction is not off the table, and no amplified music – you seem comfortable with.

Mr. Arakaki: Yes, definitely.

Mr. Dahilig: In terms of screening, is that something that can be worked out?

Mr. Arakaki: Yes, I guess with DAGS and so on and the consultants.

Mr. Dahilig: Okay.

Chair Apisa: Any questions?

Mr. Dahilig: Madame Chair, based on that, given further discussion, we may adjust our recommendations in the report on this.

Chair Apisa: Okay. Kimo.

Mr. Keawe: I guess part of the issue was we had a lot of folks concerned that this was the first time they heard about it. I've got a copy of the affidavit that you sent out as the person and there are 50 names on here, including some people who already showed up, so this was mailed out on March 2nd, if this is correct; that is just 1 thing. The other part is I think for a project this large that is going to affect the community, it is probably a good idea to, maybe to preempt some of the concerns last minute – people are going to panic, what the heck are these guys doing – is to do it ahead of time; prior to the project and the planning process, get the community...at least let them know what's going on. Because by the time they show up, you know, they are very concerned about...this is the first time we've heard of it, it's going to be in my backyard, I'm worried about the noise. And then at this point, you have already been working on this for several years, and have, like you said, looked at all the alternate sites; well, they don't know that. They are just looking at – how is it going to affect me? So I think it is a good idea to maybe do some of that on the front end so that when you get to this point...and as I understand this, if we don't move on this, you are going to lose the money, and it will be 20 years before the next opportunity comes by. Is that correct?

Mr. Arakaki: Yes.

Mr. Keawe: So then that makes the community more nervous, like, gee, if we don't say okay, then they are not going to do anything for the next 20 years. I am just trying to look at solutions that you could implement to at least get the community to understand what you are doing, why you are doing it, why you put it in the place that you are recommending ahead of time so that when they come in, they are all going to go, okay, yes, we support the project; because they had the input in the front end.

Chair Apisa: Any other...go ahead.

Ms. Nogami Streufert: If I could ask a couple questions. The money has to be encumbered or committed?

Unidentified Speaker: Encumbered.

Ms. Nogami Streufert: Encumbered. And what exactly does that mean to be having it encumbered?

Chair Apisa: Maybe just identify yourself for the record.

Mr. Eric Agena: Eric Agena, DAGS. My understanding is that they basically (have) to award by the end of June.

Ms. Nogami Streufert: It is an award for the building of the contract.

Mr. Agena: Correct.

Ms. Nogami Streufert: Not an award for the design.

Mr. Agena: Correct.

Ms. Nogami Streufert: You could do it as a design and a build?

Mr. Agena: No, because the design is already...

Ms. Nogami Streufert: Okay. So if you have a design...and I'm looking at Google Earth. On the other side of the school buildings, you have got now two basketball courts, uncovered basketball courts. Was that area ever considered?

Ms. Yamasato-Gragas: That is actually not on the property; that is the County property.

Ms. Nogami Streufert: Oh, that's the County.

Ms. Yamasato-Gragas: Yes, so we have to choose someplace that is on the school campus.

Ms. Nogami Streufert: Right. It just looked like it was on the same property; sorry. So your area is very small, then?

Mr. Arakaki: Limited.

Ms. Nogami Streufert: And one end of it, you said you had sink holes? So you really have no other option at this point.

Mr. Justin Matsukawa: The central part of campus – we did look at that, as well as the other two options; the one where we are currently looking at now, as well as the other sink hole location. It was a request by the school to look at these options. We were warned and informed about some of the preexisting issues that are onsite now, which one of them was the sink holes. Part of the central campus in the other area where we looked at, which would have fit the building, is part of a major drainage for the entire property, so it is kind of acting like a basin and there are a whole bunch of other underground utilities where...I mean, at this point we kind of know where some of them are, but because it is an old project and maybe some lack of records, we are not sure on everything that is under there, but per our diligence, we tried to locate what we know of per information that we were provided. The option where we are looking at now seems to be the most appropriate in terms of avoiding the major impacts to the existing utilities, the drainage for the campus, and obviously cost has a lot to do with that, also.

Ms. Nogami Streufert: The building that you are going to be building is not square; it is rectangular. One side is longer than the other side.

Mr. Matsukawa: Yes, ma'am.

Ms. Nogami Streufert: Is it now possible that you could make the longer side of it further away from the housing area? Rather than going north-south, going east-west. Is that a possibility to put more buffer?

Mr. Matsukawa: Yes. I mean, orientation and even potential massaging of the actual location is possible; we haven't thrown that out. The reason why we have it positioned and oriented the way it is shown is because of...part of the request is to try to incorporate as much airflow as possible through the court because the one part of the back of that court is actually a solid wall. The reason for that was to provide some sort of mitigation, sound mitigating efforts, as that part is the backdrop to the housing behind it. I mean, to answer your question, we do have some opportunities to shift and orient the building, but that's the reasons why we did it.

Mr. Agena: Sorry, Eric, again, from DAGS. Another reason for it being oriented that way is because having the long sides open would allow for additional people to view what is going on inside, so they can kind of go around. If you position it differently...and then that way, too, that the solid wall is behind the stage area, so that it is projecting away from the wall and away from the housing, ideally anyway, toward the people that are in the building. And then having the long sides oriented that way would allow more people to, I guess, watch.

Mr. Mahoney: Chair, I think the community, everybody seems positive about...they want the project to go through, but it is the mitigating factors that are the cinch to it, I believe. The Planning Director mentioned some, but if you could come up with some creative noise mitigation for being so close, I think that would go a long way with the community; that's my suggestion.

Ms. Ahuna: Or, also, to maybe have a small (inaudible) meeting at the school for the community, just to share because then they would probably understand the funding issue and that you guys did look at other sites on the campus and the risk factors of that. I no like scold Mr. Arakaki because—

Mr. Arakaki: No, but definitely we will let Ms. Speetjens know because we have a meeting today with all the principals.

Mr. Ho: Just a (inaudible) suggestion – I don't know if it would work for you – what if you flip-flop it; you put it in the parking lot and you put the parking lot where that court is going to be.

Mr. Dahilig: There could be a legislative issue with that because the monies are for a building, not for a parking lot, so you could run into some titular issues with State appropriation.

Ms. Nogami Streufert: That was great out-of-the-box thinking.

Chair Apisa: Any other questions? Okay, thank you. Did you have something to add?

Mr. Agena: Eric Agena, again, from DAGS. I am kind of in a weird position with this project right now because on the business side of things and my DAGS hat, I know all of the reasons for putting it where it is and why it works and why it makes sense. On the flip side, when I arrived,

I met several people that...well, one (inaudible) me with my family, and anyway, I am from the west side, so I know a lot of them. I (have a) vested interest in this thing. The concerns that they expressed to me, which I understand – they are a small community, an older community that is immediately adjacent to the project site. I am being put in a weird position because I am kind of advocating...I mean, or testifying on behalf of the other side. But, what I wanted to ask is, is it possible...because I didn't realize the level of pushback; I didn't anticipate that. I didn't anticipate that level of concern with what seemed like a relatively...I only saw the pluses of the project and I never really recognized or realized the type of impact that there may be on the people that are immediately adjacent to the school. Is there any chance that this action or decision on this could be deferred maybe a couple of weeks? Just to give us a little bit more time to do a little bit more outreach to the community in that area, just so that there is a...to hope for a little bit more buy-in so that there is no resentment when this project starts moving. I recognize, even from my side, that the time is very short, but I think there is still value in attempting to get additional buy-in on the bigger picture of the project, even if there won't necessarily be total agreement, but at least we are giving them an opportunity to be heard before the ultimate decision is made. I understand why the process is done the way it is and why we typically don't take that route, but I am asking if that could be a consideration for this.

Chair Apisa: Sounds...

Ms. Nogami Streufert: Will there be enough time if you have to encumber the money?

Mr. Agena: Money will be a challenge. I think this (is) kind of going to be a see what we can do with what we have, and hopefully we can get everybody to come to consensus because this might be a lose...I mean, there is a lot on the line with this one. But again, at the same time, I don't want to put just that ahead of the level...how emotional the feedback that I got, which I never expected.

Mr. Dahilig: I guess a concern is, even with a two-week timeline, you are running up against three months to get this thing awarded.

Mr. Agena: Correct.

Mr. Dahilig: And you eat 2 weeks and then you come back...again, I get the EQ side of what we are trying to do here, but what is the challenge if even 2 weeks lapses and then you are left with pretty much 75 days to notice, review, and award. We do procurement, too, so, you know, that is not easy.

Mr. Agena: Understood.

Mr. Dahilig: If you are dealing with 90 days versus 75 days...I mean, you are literally already skinning your teeth at 90 days.

Mr. Agena: I touched bases with – this mad scramble before this meeting, for me anyway – with the folks on the DOE side on O'ahu that is handling the money, and actually, I am kind of speaking way more than normally because DAGS really is not the primary on this one; this is

DOE. But in discussions with them, I think they saw, I think, the value in trying to figure this out because what they want to also do is see if there are ways that...even if, ultimately, we do end up where we are after that discussion, if there are ways that they could find to implement some additional measures to try and allay some of the concerns of the residents; this is the DOE people that are handling the funding for the project, that are managing the funds on that side. So in speaking with them a little while ago, they were okay with that; with that couple of weeks. But I know that, yes, it does pin us against the wall even further. My big concern, again, is because...and I have been speaking because some of them had to leave and they were very impassioned and wanted to really come up here and rain thunder down, but they left, so I am kind of not wanting them to feel unheard.

Mr. Dahilig: Today has just been a weird day with everything that has been going on. I trust Mr. Agena's evaluation of what could be done, but there are a lot of people that have to line up behind a lot of things and they are not even on this island that have to essentially checkmark and check these boxes off before getting to June 30th. Having been in this situation with the TIGER Grant, you are literally calling in all kinds of favors and people to try to get these things done, and we were 5 or 6 months out of the deadline on that, so we are working in a window of 75 days.

If I could just suggest something, and this is, again, a little bit out of the box because having to reconvene and go through a process like this again is probably, you know...

Ms. Nogami Streufert: Could I ask a question before you do that?

Mr. Dahilig: Yes.

Ms. Nogami Streufert: Okay. You now have the dimensions, you know what this building is going to look like, you know what you want, can you go out with a proposal, an RFP for proposals, and award a contract based upon the design of the building, not necessarily the location of the building? So that you can start that now and not have to (inaudible).

Mr. Agena: That is extremely high risk because the site conditions change when the building is moved, so there are a lot of additional costs that wouldn't be accounted for with the current design. I wouldn't say a lot of, but there are additional costs just by moving the site because the grade is different. One of the other locations, for example, we were looking at is where there is an opening that seems like it makes sense where to put it is where the main drainage of the campus flows. When you are doing that kind of stuff, in order to address that issue, there are a lot of design-related efforts that's got to take place.

Ms. Nogami Streufert: There's no other comparable area that you can—

Mr. Agena: Not like that one.

Chair Apisa: Playing on what she had to say, I mean, would people be willing to start work on their bid subject to getting it approved?

Ms. Nogami Streufert: Funding is...

Chair Apisa: That's not realistic to ask then.

Mr. Agena: Yes, and the reason being is because to expect...then we would be wanting a contractor to try and pin down a number on a bunch of unknowns.

Chair Apisa: Understand. I just had to throw it out.

Mr. Mahoney: There was a suggestion by Commissioner Ahuna about a community...it might be a little late for mea culpa, why it wasn't clear already about this project, but if there is a principal meeting and there are some meets with your architects and planners, and get some of the community people, you know, say maybe you were a little bit lax in informing everybody. Maybe they didn't get it, maybe you did your due diligence with the mail outs, but continue with the process now and not try to stall this so it makes everybody feel good. Have a meeting after this; talk to the superintendent and maybe get together. But I don't think delaying this...you are putting too many ifs on it and, business-wise, I don't think that's a good decision. You are in jeopardy of losing more just to feel good, so that is my suggestion anyway.

Mr. Dahilig: Commissioners, if I could...and I almost never ask for authority like this from the Commission in a situation like this, but given everything that has been going on, there is this situation where, from our perspective, from the Department's perspective, each day that goes by actually is an issue. It increases that likelihood of just one thing that could stumble and push that time clock past June 30th. I think we all kind of understand the investment that is going to be made in the community is quite substantial given the needs that are out there. There are a number of conditions that I do want to put on the table as part of a recommendation, but one thing I would want to ask – additionally with these things – is if the DOE and DAGS are amenable to holding a community meeting, let's say in a couple days – I will go to that meeting as well on behalf of the Planning Department and the Planning Commission – and if there are issues that I believe warrant some type of rehashing of this again, that I would pose a reconsideration request to the Planning Commission in two weeks. The timing on that, essentially, would be an April...April 4th I would have to come back to the Commission and ask for a reconsideration of the permit. But with the mitigation conditions that were to come in, if I could ask for authority to implement and suggest any other conditions as may see fit by me as the Department and as the Director to add to that. If I feel that I cannot work within those bounds of mitigative conditions, I would bring it back to the Planning Commission as part of a reconsideration request on April 10th.

Mr. Keawe: So your request would be subject to then? That we would approve subject to what you–

Mr. Dahilig: Subject to me coming back and saying... I would actually ask for a little bit broader authority when it comes to attaching, maybe, mitigative conditions that I can instruct the DOE and their architect to just implement them right away versus having to come back and rehash them again, but I will go out with them into the community as part of that meeting. If we held it maybe even 48 hours from now, let's say on Thursday – I'm sure word travels fast out

there in Waimea, so it's not something that I think people won't miss, but I am willing to go and be boots on the ground on this particular item. I would suggest and stand on the recommendation, Madame Chair, of the 7 conditions with an additional 10 items which would entertain the proposed building shall only be used from sunrise to sunset, 7 days a week; there shall be no amplified sound equipment used in the structure at any time; the applicant shall work with the Planning Director to design additional screening along the northern and eastern sides of the building and conduct a design charrette with the community to help design the screening; the applicant shall construct that screening as approved by the Director; and then the applicant shall have an additional community meeting with the Waimea community, and at the discretion of the Planning Director, add any additional mitigation conditions as appropriate. And then if I feel like, at that point, it is not going to meet what I can do and it needs to come back to the Commission, I will come back on April 4th as part of that agenda posting to ask for a reconsideration on the matter.

Ms. Nogami Streufert: Could I ask a question on that? Sound amplification – does that include microphones? Do the referees not use microphones?

Mr. Akena: Unfortunately, I am not the guy that will be running the facility, but I do know that they do intend to use the stage area for stuff like general assemblies, though.

Mr. Matsukawa: Right now, the DOE has requested to provide some sort of audio system; that is still kind of in question. I think part of that is due to the cost; that is kind of a wish list item. But obviously if the restrictions on the project do not allow something like that, I don't think that would be detrimental to the project. I think that is something we would have to consider.

Chair Apisa: Gosh. In that large of a space, you would need a microphone to reach the crowd.

Mr. Akena: I think–

Mr. Keawe: The PA system is necessary.

Mr. Akena: Yes, I am hoping that at least the PA-type system is not part of that restriction. Again, the whole reason for that stage being put in as part of that project is for them to be able to do that type of assembly. But I think the hour's restriction would, hopefully, address the concern.

Mr. Dahilig: So there shall be...no amplified sound equipment shall be used in the structure anytime other than a public address system. I think the reality is it's more...if you start throwing school dances in there and that kind of thing, I mean, that's really what...

Mr. Akena: For what it's worth, the current principal said that they don't have any dances, but that is always subject to...

Mr. Dahilig: Madame Chair, those would be the additional four conditions we would look at. Again, three specific to design and a fourth one that would revolve around a community meeting

where we can implement additional conditions once that consensus is there, and if there is something that does list, I will bring it back to the Commission on April 10th.

Ms. Higuchi Sayegusa: If there are any additional conditions, it should be wrapped into the Commission's permit that it issues.

Mr. Dahilig: Yes, so the specific language would read that the applicant shall have an additional community meeting with the Waimea community to (inaudible) additional mitigative conditions and those conditions can be implemented at the authority of the Planning Director and folded into the requirements of this permit. So it's odd. I mean, it's not a usual situation where conditions are normally processed this way, but because we are getting the information directly from the community, that way we can come up with something that's folded in.

Mr. Agena: Sorry, for clarification, when the condition is "sunrise to sunset," is that literal? Or is there a general understood time of what "sunrise" is and "sunset" is?

Mr. Dahilig: It changes with the season. People go to bed earlier, they go to bed later, depending on what—

Mr. Agena: The reason why I ask that is because I think there is concern that during the longer days, sunrise is pretty early; meaning like six... I'm just asking if there was a way to quantify that time as opposed to leaving it in that type of open language.

Mr. Dahilig: 7:45 to 4:30, I guess.

Mr. Agena: Or just something to quantify it, then that way there is no misunderstanding.

Chair Apisa: Eight to six.

Mr. Dahilig: 8:00 a.m. to 6:00 p.m.

Chair Apisa: 8:00 a.m. to 6:00 p.m.

Mr. Dahilig: That would be our oral recommendation, Madame Chair.

Chair Apisa: Go ahead.

Ms. Ahuna: Well, I think, for the most part, everybody was for it; they just didn't care for the location. The community who did speak earlier shared that they were really for this for the children or for the kids, but it was just the location. So if you can educate them on the situation and other community members can attend this, because it is, right now, during working hours and so forth, and follow through with what the Director said, you know, if you guys can put something together to educate the community, get their input, at least share with them that you did look at other places, I think they would be very sensitive to the fact of the funding issue and so forth, and be able to come up with mitigations that would work better for them. I think this is a good solution to this without having risk to losing the funds, so I am in agreement.

Chair Apisa: Okay.

Ms. Nogami Streufert: I move to accept the Director's Report for the Class IV Zoning Permit and Use Permit to allow for the construction of a new covered play court at Waimea Canyon Middle School on the school campus grounds per the amendments that were suggested by the Planning Director.

Mr. Keawe: Second.

Chair Apisa: We have a motion on the floor with a second. All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried unanimously, 6:0. Congratulations.

EXECUTIVE SESSION

Pursuant to Hawai'i Revised Statutes Sections 92-5 (a)(2 and 4), the purpose of this executive session is to consult with the County's legal counsel pertaining to Director's Department Goals for Fiscal Year 2019. Further to discuss with legal counsel regarding powers, duties, privileges and/or liabilities of the Planning Commission as it relates to the Director's departmental goals for fiscal year 2019.

Mr. Dahilig: Madame Chair, based on the amended agenda, if I could suggest the attorney read into Executive Session and we conduct Executive Session over lunch.

Ms. Higuchi Sayegusa: Madame Chair, we are on Item H.1., Executive Session. Pursuant to Hawai'i Revised Statutes Sections 92-5 (a)(2 and 4), the purpose of this Executive Session is to consult with the County's legal counsel pertaining to Director's department goals for Fiscal Year 2019. Further, to discuss with legal counsel regarding powers, duties, privileges, and/or liabilities of the Planning Commission as it relates to the Director's departmental goals for Fiscal Year 2019.

Ms. Nogami Streufert: I move that we go into Executive Session.

Mr. Mahoney: Second.

Chair Apisa: All in favor? (Unanimous voice vote)

Ms. Higuchi Sayegusa: I'm sorry. Just one more thing, I think that's the remaining item on the agenda, so if we could close immediately after...it's not? I'm sorry, do we still have another item?

Mr. Keawe: Yes, we still have the roundabout.

Ms. Higuchi Sayegusa: Oh, I'm sorry. We're taking lunch now. I'm sorry, never mind, retract that. We're good; we already voted.

Chair Apisa: Motion has passed 6:0. We will adjourn to Executive Session.

The Commission moved into Executive Session at 12:53 p.m.

Ms. Ahuna left the meeting at 1:25 p.m.

The Commission returned to Open Session at 1:58 p.m.

Chair Apisa: Call the meeting back to order after Executive Session.

Mr. Dahilig: Thank you, Madame Chair.

NEW BUSINESS (Continued)

Special Management Area Use Permit SMA(U)-2018-6 for the construction of highway improvements at the Kapa‘a Stream Bridge and Kūhiō Highway/Mailihuna Road intersection in Kapa‘a, identified as Tax Map Keys: 4-6-014:024, 031, 033, 090, 092; 4-7-003:001, 002; 4-7-008:042, and affecting a total area of approx. 1.7 acres = *Federal Highway Administration/State of Hawai‘i, Department of Transportation.*

Mr. Dahilig: We are now on Item F.2.a. This is Special Management Area Use Permit SMA(U)-2018-6. This is for construction of highway improvements at Kūhiō (Highway) and Mailihuna (Road). The agency hearing on this particular matter was closed on this one, but I do need to ask for one clarifying action that you guys...I realize that the agency hearing for the DOE permit was not closed, so if I could get a motion to just have that agency hearing closed.

Mr. Keawe: Waimea Canyon?

Mr. Dahilig: The Waimea Canyon one, yes.

Chair Apisa: Do I have a motion?

Ms. Nogami Streufert: Which one? I’m sorry.

Mr. Dahilig: F.2.b.

Chair Apisa: F.2.b., Waimea Canyon Middle School.

Mr. Mahoney: Okay. Move to close the Waimea Canyon Middle School hearing.

Ms. Nogami Streufert: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0.

Mr. Dahilig: Thank you, Madame Chair.

This item – Jody will be making the presentation on behalf of the Department, and the agency hearing for this one is closed.

Ms. Jody Galinato: Good afternoon, Madame Chair and members of the Commission. I will try to shortcut my way through this, and if you guys have any questions, feel free to ask me after.

Ms. Galinato read the Project Description and Use, Additional Findings, and Preliminary Evaluation sections of the Director's Report for the record (on file with the Planning Department).

Ms. Galinato: I will hold off for my Preliminary Conclusion and Recommendation.

Chair Apisa: Thank you, Jody.

Ms. Galinato: Oh, I'm sorry, I did do a supplement. The applicant responded to concerns that our Sea Grant Agent, Ruby Pap, had and then today you also received a letter in support from the Kaua'i Bike Path.

Chair Apisa: The applicant. Thank you for being so patient to be the last on the agenda here.

Mr. Tom Mohler: My name is Tom Mohler. I am with Central Federal Highways. I am a regional engineer that has been sent to Kaua'i. We are here to build your bridges.

Chair Apisa: All right, thank you. You got a taste of Kaua'i time today.

Mr. Mohler: Yes.

Chair Apisa: Do you want to give us a little presentation or tell us something about it?

Mr. Mohler: Currently, it is still in design, so I have nothing, really, to present to you. The roundabout probably will be built separately from the bridge. As in current work, we just completely shut traffic down. There will be a bypass bridge built – very similar to what we are doing at Hanapēpē right now – and that will carry the traffic across. We will build the new bridge, remove the bypass, and put the traffic back on the new bridge.

The roundabout – I believe we are doing some review to make sure we have clearance. The issue is how do you continue to get traffic through while you are under construction? And that is the part that we are still working on. We are still in design, so I don't have any final designs to give you yet.

Chair Apisa: You said they would come separately. Which...the bridge or the—

Mr. Mohler: Do you have a preference?

Chair Apisa: I personally don't; I don't know.

Mr. Mohler: I don't either. We will probably leave that up to, actually, the contractor when they submit their proposal; how they perceive to approach this would be pretty much their means and methods.

Chair Apisa: Any questions?

Mr. Keawe: I have a question. So the final design on the roundabout isn't completed yet?

Mr. Mohler: No, sir.

Mr. Keawe: Okay. One of the questions I have, and maybe you can or can't answer it, is that is a pretty fairly steep grade, Mailihuna Road, as it comes down to the stop, and then it further slopes right back down to the beach area, so I just don't know and understand how...are you going to build a roundabout on a grade? Or are you going to try to flatten it out?

Mr. Mohler: No, it will have to flatten out. I know there has been some additional survey work done. I have no idea what elevation changes or how they are going to...but we have to somehow flatten out that vertical curve; you are absolutely right.

Ms. Nogami Streufert: I read the proposal. It appeared that you are going to be building the bypass for the bridge first, or an alternate bridge.

Mr. Mohler: Right.

Ms. Nogami Streufert: So that you can start working on the bridge at one point. And then, as I understand it, you are going to get rid of that bypass and then start working on the roundabout. Is it possible that you could just take the bypass—?

Mr. Mohler: We could, and that is part of what we are trying to figure out now.

Ms. Nogami Streufert: But would it be possible to just take that bypass and just continue it on past the roundabout so that you have a continuous road, and then you can work on both of them as you needed to—

Mr. Mohler: Yes.

Ms. Nogami Streufert: —but the traffic wouldn't have to relearn a pattern every "x" amount of months.

Mr. Mohler: That is a possibility, yes.

Chair Apisa: That makes me think — "x" amount of months — estimate time on just to do the roundabout once they start?

Mr. Mohler: The whole project is scheduled for almost 2 years; 22 months.

Chair Apisa: That would be the bridge and the roundabout?

Mr. Mohler: Yes.

Mr. Keawe: So it is basically a five-year project from initial planning to completion?

Mr. Mohler: From planning, yes.

Ms. Nogami Streufert: Is there any anticipated start date?

Mr. Mohler: Money-wise, they would like to get it moved at the end of the year. We will have to see what happens. It may be the first part of next year.

Ms. Nogami Streufert: Is there a deadline when the money would die, so to speak?

Mr. Mohler: I believe it was a five-year plan, but I am not exactly sure.

Mr. Ho: Does the bridge come under Federal government scrutiny or the State?

Mr. Mohler: Well, we are building it for the State under the Federal guidelines for Federal bridges.

Mr. Ho: And once you are through it becomes the State responsibility?

Mr. Mohler: It will be the State's bridge, yes.

Chair Apisa: No other questions? I guess there is no one here to provide testimony.

Ms. Nogami Streufert: Could I just ask one more question about...there is a school that is right up the street there.

Mr. Mohler: Yes.

Ms. Nogami Streufert: I am not sure how many students are in that school, but it is a relatively large school. Are there any safety concerns while you are building this or even after that because of the way that...with a roundabout, does that make it more or less dangerous for the children? Or does it...are there any (inaudible)?

Mr. Mohler: Because roundabouts have the ability to slow traffic down, just by the general configuration, that tends to be a safety factor particularly for pedestrians or bicyclists. As far as construction goes, safety is always first and foremost.

Ms. Nogami Streufert: Are there any crosswalks that are going to go from mauka to makai of Kūhiō (Highway)?

Mr. Keawe: Yes.

Ms. Nogami Streufert: That's by Keālia Beach.

Mr. Mohler: In the final design, yes. As far as construction and access through, I don't know yet. That becomes kind of tricky. We have to figure out whether we can put them somewhere other than the construction zone; we can't have them in there.

Ms. Nogami Streufert: Right, but since it is a two-year project—

Mr. Mohler: Yes.

Ms. Nogami Streufert: —it might be useful to think...

Mr. Keawe: There is actually a picture, Glenda, on page 250, and it shows the roundabout with the sidewalks and stuff.

Ms. Nogami Streufert: Yes, and I looked at that and I thought I am not sure how safe those are, so I was just wondering about (inaudible).

Mr. Keawe: Well, you think about it now, all the Kapa'a School kids, they run up and down that hill as part of their training for football, cross country, whatever.

Ms. Nogami Streufert: Really?

Mr. Keawe: Yes.

Ms. Nogami Streufert: And they cross Kūhiō (Highway)?

Mr. Keawe: And they come all the way down, and then they just turn left and they start going towards Keālia along the side, and then sometimes they just run across the street; they try to get to the pathway. Yes. I have a grandson, so yes.

Ms. Nogami Streufert: That is what I would be afraid of because it's—

Mr. Keawe: Yes, I think that is the real issue, I think, in this is trying to improve the safety for the kids because they are still going to do the same thing. They are not going to change their routes, so try to make them safer.

Chair Apisa: No further questions? Ready to take any action?

Mr. Mahoney: I am ready to make a motion if everybody is through.

Ms. Nogami Streufert: Wait, we haven't heard the recommendation yet.

Mr. Mahoney: Okay, we got to have the recommendation, yes.

Chair Apisa: Oh, I'm sorry, I forgot Jody's doing the—

Ms. Galinato: That's okay.

Chair Apisa: I'm sorry, Jody.

Ms. Galinato: I will do it short and sweet. Based on the foregoing conclusion, it is recommended that SMA Use Permit 2018-6 be approved with 14 conditions, which I won't read unless you want me to.

Chair Apisa: Is everybody okay with– Applicant, are you okay with the 14 conditions? You have seen them and–

Mr. Mohler: I have not seen them, but I think the rest of them have, so yes.

Chair Apisa: Okay.

Mr. Mahoney: I am ready to make a motion, then. I move to approve Special Management Area Use Permit SMA(U)-2018-6 for the construction of highway improvements at Kapa'a Stream Bridge and Kūhiō Highway/Mailihuna Road intersection in Kapa'a.

Ms. Nogami Streufert: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion passed unanimously 5:0. Thank you.

Mr. Mohler: Thank you.

Chair Apisa: Thanks again for your patience.

Mr. Dahilig: Thank you, Madame Chair.

Zoning Amendment ZA-2014-4, Amendments to Chapter 8 of the Kaua'i County Code 1987, as amended, relating to the Agriculture Zoning District and the re-designation of agriculture uses that are generally permitted, permitted with a use permit, and/or prohibited in each respective zoning district = County of Kaua'i. [Director's Report received 3/25/14, hearing continued 3/25/14.]

Mr. Dahilig: We are on Item F.3. This is a continued public hearing for Zoning Amendment ZA-2014-4. This is the amendments to Chapter 8 of the Kaua'i County Code 1987 for the Agriculture Zoning District. Our Deputy Director will also be jumping in on this conversation, but ultimately, you may notice – again, it has been in stasis for about four years – but the strategy behind this particular ordinance and why it is relevant to the new General Plan that was just signed into law last week really comes as a consequence of important agricultural lands now being part of the picture in our planning process. This ordinance is meant to be probably the first out of many you are going to see that are going to be lining up for approval to implement the General Plan, so this is probably the first plan you will see.

Anyway, I will leave it over to Chance and Ka‘āina for this discussion.

Mr. Bukoski: Good afternoon, Chair and Commissioners, again. This Zoning Amendment is in accordance with Section 8-3.4 of the Kaua‘i County Code. A Zoning Amendment is required to amend the text of Chapter 8 of the Kaua‘i County Code. Before I begin my report, I am just going to summarize the important key points in this report.

Mr. Bukoski read the Project Description and Use and Additional Findings sections of Supplement No. 1 to the Director’s Report for the record (on file with the Planning Department).

Mr. Bukoski: That concludes my staff report.

Chair Apisa: Thank you, Chance. Questions? Comments?

Mr. Keawe: Chance, the big difference (inaudible) is under that Section 8-8.2 talking about the permitted densities. In Agriculture 1, it is one dwelling for each parcel, and then Agriculture 2, one dwelling for each parcel one acre or larger, and then (B) says one additional dwelling unit for each additional three acres in the same parcel provided that no more than five dwelling units may be developed in any one parcel. These are the changes, right?

Mr. Bukoski: Correct; however, the only changes are the ones that are underlined. So for Agriculture 1, which is categorized as—

Mr. Keawe: One, one.

Mr. Bukoski: Yes, so only lands pertaining to that matter; however, those others you mentioned are already in the CZO, such as the one additional dwelling unit for (each) additional three acres.

Mr. Keawe: So they are already in the—

Mr. Bukoski: Yes.

Mr. Keawe: All right.

Mr. Bukoski: So it is just the number changes for clarification purposes.

Ms. Nogami Streufert: In the “Table of Uses” that you have, if the spaces are left blank, what does that mean as opposed to “P” and “U”?

Mr. Bukoski: It is not permitted.

Ms. Nogami Streufert: It is not permitted? So it is like a “U” or...what does a “U” stand for then?

Mr. Bukoski: It is just straight prohibited.

Ms. Nogami Streufert: Okay.

Chair Apisa: We have no other questions, so go into the recommendation.

Mr. Bukoski: Awesome.

Mr. Bukoski read the Recommendation section of Supplemental No. 1 to the Director's Report for the record (on file with the Planning Department).

Chair Apisa: Thank you. Kimo, ready to—

Mr. Keawe: Are we ready for a motion?

Chair Apisa: Yes.

Mr. Keawe: Okay. I move to approve Zoning Amendment ZA-2014-4, amendments to Chapter 8 of the Kaua'i County Code 1987, as amended, relating to the Agriculture Zoning District and the re-designation of agriculture uses that are generally permitted, permitted with a use permit, or prohibited in each respective zoning district.

Mr. Mahoney: Second.

Chair Apisa: Any other discussion on it? All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried unanimously, 5:0.

Mr. Dahilig: Thank you, Madame Chair.

Zoning Amendment ZA-2018-5: A bill (No. 2687) for an ordinance amending Chapter 8, Sections 8-2.1(a) and 8-4.2(a), and Chapter 10, Section 10-5A.7(a), Kaua'i County Urban Design District. The proposal amends the Comprehensive Zoning Ordinance by introducing a new residential designation to reflect the increase in the Residential Zoning District to R-40 = *Kaua'i County Council*.

Mr. Dahilig: We are now on Item 4. This is New Public Hearing under Item 4.a., Zoning Amendment ZA-2018-5 – Bill No. 2687. This is, again, the amendment to the Code, specifically the Līhu'e Town Core Urban Design District Code, to increase the density of the Residential Zoning District to R-40. I want to be clear since Felicia, in her testimony, was asking some questions regarding this. This only applies to the Rice Street Urban Design area within the Līhu'e Town Core Urban Design Districts; there are four of them. This only applies to one of the four, and that is along Rice Street. I will turn it over to Nani. Just as a heads up, you will be seeing a lot of Nani and Chance over the next coming months because they will be the ones that are shepherding a lot of the initial set of ordinances that will be coming in for implementation of the General Plan.

Ms. Nani Sadora: Aloha, Chair and Commissioners. Nani Sadora, again. I will go ahead and read the Director's Report at this time, if I may.

Ms. Sadora read the Actions Required and Project Description and Use sections of the Director's Report for the record (on file with the Planning Department).

Ms. Sadora: For Agency Comments, I wanted to just go ahead and note that we did receive comments from Transportation and the response from that agency is Exhibit B of your packet as well. No other comments were received.

Ms. Sadora continued reading the Evaluation section of the Director's Report for the record (on file with the Planning Department).

Ms. Sadora: That concludes my report.

Chair Apisa: Thank you. Any questions? Go ahead.

Mr. Ho: Nani, what are the boundaries of this project, of this zoning area?

Ms. Sadora: This would be for Rice Street.

Mr. Ho: From where to where?

Ms. Sadora: I am not exactly sure. |

Chair Apisa: So Lihu'e Townhouse is included?

Ms. Sadora: I believe so, yes.

Chair Apisa: It goes down that far.

Ms. Sadora: Yes.

Mr. Keawe: Which one is Lihu'e Townhouse?

Ms. Sadora: Next to Ace.

Mr. Dahilig: It is a four-story building on your left as you are heading mauka to makai.

Mr. Keawe: Okay.

Chair Apisa: We know at least down that far. We don't know on the other end.

Mr. Keawe: Right. So this would include areas like where Tip Top Café is, all the streets...Ekahi Street--

Chair Apisa: No, only along Rice Street.

Mr. Keawe: Only along Rice Street?

Chair Apisa: I think so. Is that correct, Nani?

Ms. Sadora: Yes.

Chair Apisa: Just along Rice Street.

Mr. Keawe: Just along Rice Street.

Mr. Dahilig: And some of the minor streets that are...like Hamura Saimin and that area.

Mr. Keawe: Okay, so it is just basically that Rice Street corridor and properties that line—

Mr. Dahilig: That are along that stretch.

Mr. Keawe: Okay.

Mr. Dahilig: And a couple that are one block off towards the gulch side; that is part of that design district.

Mr. Ho: Aren't these all commercial areas?

Mr. Dahilig: These were old commercial areas, but back in 2009, I believe, these were rezoned as part...or was it '10?

Ms. Sadora: No, 2009.

Mr. Dahilig: They were rezoned to include these mixed-use districts, so that became an overlay over the original zoning. It is this new code that it controls; that is why you are seeing the change to Chapter 10, which normally you don't see often when you see a request from our department because the Chapter 10 codes are region-specific codes versus Chapter 8, which is the general code. The Chapter 8 changes are more for definitional purposes, but then this implemented via the Chapter 10 code and Section 10-5A.

Just to answer one more question, under Section 10-5A.7(k), the height limit within the area is 50 (feet), so you are just really fitting more density within a certain shape in this area. As I may have mentioned to some of you, the height is similar to what you would be seeing at Līhu'e Town, as Nani mentioned, but also 10 feet shorter than the clock tower that – we were trying to mention it before Ka'āina walked out of the room – but it won't be as tall as the clock tower.

Mr. Ho: Okay.

Mr. Keawe: One quick question. Mike, you know this area really well. So where Dani's restaurant is, next to it there is this big vacant lot where they store a bunch of cars and stuff; this would be subject to that.

Mr. Dahilig: This could be part of that.

Mr. Keawe: All right. So that particular...that is a pretty large parcel that could be developed into additional housing with the vertical height.

Mr. Dahilig: Yes.

Mr. Keawe: Okay.

Mr. Ho: The vertical limit is 50 feet?

Mr. Dahilig: Fifty feet.

Ms. Nogami Streufert: Will this make it look like a gauntlet going through there?

Mr. Dahilig: Well, part of it is there are treatments that are talked about in the Līhu'e Town Core Ordinance that talk about setbacks, that talk about what your frontage has to look like, colors, and those types of things. There will be a bit of a tightening in the space, but it wouldn't be something where you are dealing with Downtown Honolulu where you have a wall like this (inaudible).

Ms. Nogami Streufert: Like a wind tunnel effect.

Mr. Keawe: You sure now? Okay.

Mr. Ho: Question. What would the permit be for that? A Class IV?

Mr. Dahilig: Over-the-counter.

Mr. Ho: Over-the-counter?

Mr. Dahilig: Over-the-counter.

Mr. Keawe: So once this is approved, then, basically, it is an over-the-counter issue.

Mr. Dahilig: Yes.

Mr. Keawe: Okay.

Mr. Dahilig: And that is why we pegged it at R-40 because it is a form and a density that already exists within the area. When we have been in discussions with the Councilmember about looking at affordable housing options, we know that this type of density is not something that is unfamiliar to the people up and down Rice Street. It is not like R-60 or R-80. We are at a level that we are kind of similar—

Mr. Keawe: But it wouldn't be subject to the normal permit process, which includes testimony and that type of stuff. They can come in and apply based under this particular amendment and just get your permit over the counter. True?

Mr. Dahilig: That is generally the case. I mean, there is something we are sorting out concerning whether...if you hit 50 units or above that you do trigger another...I guess a Class IV Permit, but I think given the size and the density of these areas, it may not necessarily...you would need 1.2 acres, essentially, to even meet a 50-unit type of–

Mr. Keawe: 50-unit?

Mr. Dahilig: Yes.

Mr. Keawe: 1.2 acres; just based on size and number of units.

Mr. Dahilig: Yes. And to find a 1.2-acre lot on Rice Street is (inaudible).

Chair Apisa: Is it still the 50 percent lot coverage?

Mr. Dahilig: No, this is a little different.

Chair Apisa: This is a little different.

Mr. Dahilig: This is different now.

Ms. Nogami Streufert: Līhu'e Townhouse – what kind of a building is that? How many units do they have in there? Is it an R-(inaudible)?

Chair Apisa: Is that 40 feet tall?

Mr. Dahilig: Seventy units.

Ms. Nogami Streufert: Seventy units?

Mr. Dahilig: Yes. It is a pretty big–

Ms. Nogami Streufert: So it would be like an R-70 or R-80?

Mr. Dahilig: It is less than 50. We can get the Deputy Director up to the mic.

Deputy Planning Director Ka'āina Hull: Aloha, Commission. Ka'āina Hull on behalf of the Department. The Līhu'e Town Core homes were constructed at approximately R...it was constructed before zoning had density. It got what was a Variance Permit back then, and it is at about an R-65 to an R-70 density equivalent. This isn't even proposing that much, but it is saying there already exists, on Rice Street within the 50-foot threshold or envelope, something constructed at an R-70 density.

Ms. Nogami Streufert: So this would be about half of that?

Mr. Hull: Correct.

Chair Apisa: What is the height on that? I mean, is it like the 40-foot height on Līhu‘e Townhouse?

Mr. Hull: It is a little higher than 40 feet. I don’t have the exact measurement, but it is under the 50-foot threshold though.

Ms. Nogami Streufert: But this Rice Street neighborhood is just on Rice Street, not the entire–

Mr. Dahilig: Just on Rice Street, and then those that are, I say, like a block off towards the gulch.

Mr. Hull: The map that Marisa handed out is essentially...you see that kind of yellowish-greenish shade, it is all those properties within that area.

Mr. Ho: Ka‘āina, wouldn’t this increase the property value exponentially?

Mr. Hull: Theoretically because now they have the possibility of constructing more units, but generally...you know, appraisers have to do their own analyses, whether or not infrastructure is adequate in those areas. I would say some of the misconception when people read this was like oh, now we are just going to be allowing these 40-unit or 80-unit dwelling units, but something, too, that the Director alluded to, most of the properties on Rice Street don’t actually exceed an acre in size, so you are not going to see many R-40 projects come through. But what it says for properties that are smaller, like a quarter acre in size that qualify for 5 units right now, this would allow them to go up to 10 units. So you will see a lot of smaller properties, more than likely, take advantage of this increased density and the ability to process it over the counter as opposed to...and we have actually run into some applicants...as wonderful it is to appear before the Planning Commission, there are some applicants that see it as a barrier to entry, if you will. There is a certain level of unsureness as they are doing their own investment pencil analysis of whether or not they should go for a project and seeing if it is directly over the counter gives some of those property owners or potential developers the stability to push the project through.

Ms. Nogami Streufert: Is there any effort to be made with trying to keep some of these older buildings? I am not sure if they are historic – I don’t know what constitutes historic – but to keep at least the face of it to be historic.

Mr. Hull: That is something that comes in line with a lot of the properties that are on Rice Street. Virtually all of those properties, or structures I should say, along Rice Street that are constructed and are existing today are historic under State law; they exceed 50 years. Many of them are in our County of Kaua‘i Historic Inventory Resource List and therefore, require going back to the Kaua‘i Historic Preservation Review Commission for their input and analysis, as well as the SHPD. I don’t want to say that many of these buildings can’t be knocked down, but because of their historic context, many of them, more than likely, would be preserved, and if any proposals for properties that have already been built out were to take advantage of this, more than likely you see that construction taking place on the rear of the property. For the most part, what it takes...and the Department did do an analysis of further intensification of density given the density increases already included in the Līhu‘e Town Core Urban Design Plan. The study

analysis kind of points it out, frankly, that there is not enough impetus from many property owners to take existing capital improvements – i.e. an existing structure – and knock it down; therefore, obliterating its value and reconstruct a new structure. So we anticipate, you know, if individuals do take advantage of this, it is going to be on either those few vacant parcels – and I think there is only like four or five truly vacant, large parcels within this district – or those parcels that have considerably large parking areas that are not being fully utilized and they can convert some of that space into housing inventory, essentially.

Ms. Nogami Streufert: Could they build up? On top of the historic structures?

Mr. Hull: You know, it depends on the structure, and many of the structures that we have come across in the past, the structure integrity would be very hard to maintain and it would be exceedingly expensive to attempt to try and do that, so quite honestly, the talks that we have had with many of the property owners, we don't anticipate them doing that, but that is something that a property owner would have to do an analysis on their own on whether or not the financial benefits outweigh the risks. But like I said, we would not anticipate much of that happening just because the cost of it.

Mr. Ho: Could this also be mixed-use? You have a commercial space below and apartments above.

Mr. Hull: Yes. Currently, all of the Rice Street area is...it is permissible to have mixed-use; that already is a foregone conclusion for this area. This just allows for property owners to increase the residential density, should they want to do it, in conjunction with commercial usages, should they want to do that as well.

Chair Apisa: Are we ready to take action?

Mr. Mahoney: Yes. Chair, I move to approve Zoning Amendment ZA-2018-5, Bill No. 2687 for an ordinance amending Chapter 8, Sections 8-2.1(a) and 8-4.2(a), and Chapter 10, Section 10-5A.7(a), Kaua'i County Urban Design District. This proposal amends the Comprehensive Zoning Ordinance by introducing a new residential designation to reflect the increase in the Residential Zoning District to R-40.

Ms. Nogami Streufert: Second.

Chair Apisa: Okay, we have a motion on the floor. All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried unanimously, 5:0.

Mr. Dahilig: Thank you, Madame Chair. In terms of items for action, those were all the items that are on today's agenda.

ANNOUNCEMENTS

Topics for Future Meetings

Mr. Dahilig: I have circulated, for the Commissioners' review, the on deck sheets that show the upcoming Commission permits that are coming through, and as you see, we are pretty lean. There is a possibility we may end up consolidating agendas going into the next couple months or so, so don't be surprised if potentially going into April, May, or even June and July, we may slim the Commission business down to one commission meeting instead of two; no make sense trying to bring everybody in if we don't have any items necessarily.

The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter at the Lihu'e Civic Center, Mo'ikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Lihu'e, Kaua'i, Hawai'i 96766 on Tuesday, April 10, 2018.

Mr. Dahilig: With that, our next meeting is going to be on Tuesday, April 10, 2018. I believe we have two permits and I believe there may be one return on a Contested Case Hearing that may be up at that meeting, so just be aware of that. Other than that, Madame Chair, that is all I have for Announcements.

ADJOURNMENT

Chair Apisa: Motion to adjourn.

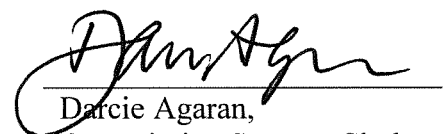
Mr. Mahoney: Move to adjourn, Chair.

Mr. Ho: Second.

Chair Apisa: All in favor? (Unanimous voice vote) Any opposed? (None) Motion carried 5:0. We are adjourned.

Chair Apisa adjourned the meeting at 2:48 p.m.

Respectfully submitted by:


Darcie Agaran,
Commission Support Clerk

() Approved as circulated (add date of meeting approval)

() Approved as amended. See minutes of _____ meeting.